

# EB 5 Job Creation Requirements Explained

A comprehensive guide from EB5 Attorneys

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The EB 5 program ties permanent residence to job creation. Every investor must demonstrate that their capital investment will create at least 10 full time positions for qualifying U.S. workers, a requirement codified in INA 203(b)(5)(A)(ii). How those jobs are counted, who qualifies as an eligible employee, and which economic models USCIS accepts to verify the numbers all affect whether your petition succeeds or fails at the I 829 stage. This guide breaks down the job creation rules, the economic methodologies behind indirect job projections, and the practical steps your attorney should take to protect your case.

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## The 10 Full Time Jobs Requirement Under INA 203(b)(5)

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Section 203(b)(5)(A)(ii) of the Immigration and Nationality Act requires each EB 5 investor to create at least 10 full time positions for qualifying employees. Full time employment means a minimum of 35 hours per week, as defined in 8 CFR 204.6(e). Part time positions, even if two or more are combined, do not satisfy the requirement. Independent contractors, temporary workers, and employees hired on a seasonal basis also fail to qualify. USCIS examines job creation at two stages: first, prospectively at the I 526E petition stage, where the business plan and economic analysis must project that the investment will produce the required jobs within a reasonable timeframe; and second, retrospectively at the I 829 petition stage, where the investor must show that the jobs were actually created or, for regional center investments, that the economic model supports the claimed job numbers. The job creation threshold is per investor, not per project. In a pooled investment involving 50 investors, the project must demonstrate creation of at least 500 qualifying positions. Your attorney should verify that the project's job creation projections are realistic and supported by credible economic analysis before you invest.

## Direct Jobs: Requirements for Direct Investment Projects

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Investors who place capital directly into a new commercial enterprise outside the regional center program must count only direct jobs. A direct job is one held by an identifiable employee who appears on the company's payroll. The employee must be a U.S. citizen, lawful permanent resident, or other authorized worker as defined in 8 CFR 204.6(e). The investor cannot count themselves, their spouse, or their children as qualifying employees. At the I 829 stage, the investor must provide documentary evidence of each direct employee. This typically includes IRS Form W 2s, payroll records, I 9 employment verification forms, and quarterly wage reports filed with state labor agencies. Tax returns showing payroll expenses are also relevant. The 10 positions must exist simultaneously, not sequentially. If your company hired 15 people over two years but never had more than 8 on staff at any one time, you have not met the requirement. Your attorney should advise you on documentation practices from the moment the business begins operations, not just when the I 829 filing approaches. Waiting until the last minute to assemble payroll records is a common and avoidable mistake that leads to RFEs and, in some cases, denials.

## Indirect and Induced Jobs: The Regional Center Advantage

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One of the primary benefits of investing through an EB 5 regional center is the ability to count indirect and induced jobs toward the 10 job requirement. This distinction, established in Section 610 of the Departments of Commerce, Justice, and State Appropriations Act of 1993, allows regional center investors to satisfy the job creation threshold without placing 10 identifiable employees on a company payroll. Indirect jobs are positions created in businesses that supply goods or services to the EB 5 project. For example, a hotel construction project generates indirect jobs at lumber suppliers, concrete companies, architectural firms, and equipment rental businesses. Induced jobs result from the economic spending of employees at both the EB 5 project and its suppliers. When construction workers spend their wages at restaurants, grocery stores, and retail shops, those businesses hire additional staff. These positions count as induced jobs. Because indirect and induced jobs are not tied to specific identifiable employees, they must be calculated using accepted economic methodologies. USCIS requires that regional center projects submit an economic analysis prepared by a qualified economist demonstrating how the invested capital generates these positions. The economic analysis is submitted with the I 526E petition and, if the methodology changes, may be updated at the I 829 stage.

## RIMS II: The Bureau of Economic Analysis Model

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The Regional Input Output Modeling System, version II (RIMS II), is an economic model maintained by the Bureau of Economic Analysis (BEA), a division of the U.S. Department of Commerce. RIMS II uses regional economic multipliers to estimate the total employment impact of a given expenditure within a specific geographic area. To use RIMS II, an economist identifies the industry sector, the geographic region, and the amount of capital expenditure. The model then produces a multiplier that estimates total jobs (direct plus indirect plus induced) per million dollars of spending. For example, if the RIMS II multiplier for hotel construction in Miami Dade County is 15.2 jobs per million dollars, a \$50 million construction budget would project 760 total jobs. RIMS II is one of the two economic models most commonly accepted by USCIS for EB 5 job creation analysis. Its strengths include official government backing (since BEA is a federal agency), transparent methodology, and widespread familiarity among USCIS economists and adjudicators. However, RIMS II has limitations. It uses fixed regional multipliers that may not account for local labor market conditions, and it requires the economist to make assumptions about which expenditures qualify as inputs to the model. Your attorney should ensure that the economist preparing the analysis uses RIMS II multipliers appropriate to the project's specific industry classification and geographic location.

## IMPLAN: The Private Sector Alternative

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IMPLAN (Impact Analysis for Planning) is a private sector economic modeling tool developed originally by the U.S. Forest Service and now maintained by IMPLAN Group LLC. Like RIMS II, IMPLAN uses input output analysis to estimate the employment effects of economic activity within a defined region. However, IMPLAN offers greater flexibility in modeling complex scenarios because it allows the economist to customize inputs, adjust for local conditions, and model multi year spending patterns. IMPLAN is the other economic methodology most commonly accepted by USCIS for EB 5 regional center petitions. Many EB 5 economists prefer IMPLAN because it permits more granular analysis, including the ability to model construction phase jobs separately from operational phase jobs, to account for leakage (spending that leaves the regional economy), and to differentiate between various types of expenditures within a single project. USCIS does not mandate the use of one model over the other. Both RIMS II and IMPLAN are accepted, provided the analysis is prepared by a qualified economist and the inputs and assumptions are reasonable and well documented. Some economists use both models as a cross check, presenting RIMS II and IMPLAN results side by side to demonstrate consistency. Your attorney should review the economic analysis for reasonableness, verifying that the inputs match the project's actual budget and business plan, and that the economist has not inflated job numbers through aggressive or unsupported assumptions.

## What Qualifies as a Full Time Position

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Under 8 CFR 204.6(e), a full time position requires a minimum of 35 hours of work per week. The position must be permanent, indefinite, or expected to last at least two years. Temporary or seasonal positions do not count. The employee filling the position must be a qualifying employee, meaning a U.S. citizen, lawful permanent resident, asylee, refugee, or other individual authorized to work in the United States. The investor, their spouse, and their children are excluded from the count. USCIS also scrutinizes whether the positions are genuine. Creating 10 nominal positions where employees have no real duties or work minimal hours does not satisfy the requirement. The positions must reflect actual economic activity generated by the invested capital. For direct investments, the evidence must show real employees performing real work. For regional center investments, the economic model must be grounded in realistic spending projections. One area of frequent confusion involves construction jobs. Construction positions are typically temporary by nature, lasting only as long as the building phase. For direct investors, construction jobs generally do not qualify because they are not permanent. For regional center investors, however, construction phase spending generates indirect and induced jobs that can be counted through the economic model, even though the construction work itself is temporary. This distinction is a significant reason many investors choose the regional center pathway.

## Job Creation Timeline and the I 829 Filing

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USCIS requires that the 10 jobs be created within a reasonable period after the investor's admission to the United States as a conditional permanent resident. The EB 5 Reform and Integrity Act of 2022 and USCIS policy guidance indicate that job creation should be demonstrated by the time the I 829 petition is filed, which occurs during the 90 day window before the two year conditional residence period expires. For direct investors, this means the commercial enterprise must have 10 full time employees on payroll when the I 829 is filed. If the business has not yet reached 10 employees, the investor must demonstrate that the enterprise is actively operating and that the remaining positions will be filled within a reasonable time. USCIS has some flexibility here, but falling significantly short of 10 jobs at the I 829 stage creates serious risk. For regional center investors, the I 829 must include an updated economic analysis showing that the invested capital has been deployed into job creating activity and that the economic model supports at least 10 jobs per investor. If the project experienced delays or cost overruns that reduced job creation below projections, the economic analysis must be revised to reflect actual conditions. Your attorney should begin preparing for the I 829 filing well before the 90 day window opens. Gathering payroll records, updating economic analyses, and obtaining current financial statements from the project all require lead time. The I 829 filing fee is \$3,750 as of April 2026, and the form requires substantial supporting documentation.

## What Happens When Job Creation Falls Short

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If an investor cannot demonstrate creation of 10 qualifying jobs at the I 829 stage, USCIS may deny the petition. A denial means the investor's conditional permanent residence is terminated, along with the conditional status of any derivative family members. The consequences are severe: the investor and family must leave the United States or face removal proceedings. However, USCIS does not automatically deny an I 829 petition if the job count is slightly below 10. If the investor can show that the commercial enterprise is operational and that the remaining jobs will be created within a reasonable period, USCIS may approve the petition or issue a request for evidence rather than an outright denial. The standard is whether the investor has invested the required capital and is actively in the process of creating the required jobs. For regional center investors, the situation is more nuanced. If the project has not yet completed construction or fully deployed the invested capital, the economist can sometimes project future job creation based on remaining expenditures. However, if the project has stalled, been abandoned, or experienced financial failure, the job creation projections may no longer be supportable. In these cases, the investor faces a difficult situation that may require legal action against the project, a new investment, or exploration of other immigration options. Your attorney's role is to monitor job creation throughout the conditional residence period, not just at the I 829 filing. Early identification of job creation shortfalls allows time to explore remedial options.

## Attorney Due Diligence on Job Creation Projections

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Before you invest, your attorney should independently evaluate the job creation projections in the project's economic analysis. This means reviewing the economist's qualifications, the model used (RIMS II, IMPLAN, or another accepted methodology), the inputs and assumptions, and the reasonableness of the projected job numbers. A credible economic analysis should clearly identify the spending categories, the industry codes used for each category, the geographic multipliers applied, and the total jobs projected per investor. If the analysis relies on aggressive assumptions, such as unusually high multipliers, inflated construction budgets, or speculative revenue projections, your attorney should raise concerns before you commit capital. Your attorney should also verify that the project can realistically spend the projected amount. A project that claims \$200 million in construction costs but has only secured \$80 million in financing may not generate the job numbers projected. Budget overruns can increase job creation (because more spending generates more jobs), but budget shortfalls reduce it. Finally, your attorney should ask whether the economic analysis has been reviewed or approved by USCIS as part of the regional center's designation or project exemplar approval. While prior USCIS acceptance does not guarantee future approval, it does provide a baseline of credibility.

## Frequently Asked Questions

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### 1. Can I count myself or my family members toward the 10 job requirement?

No. Under 8 CFR 204.6(e), the EB 5 investor, their spouse, and their unmarried children under 21 cannot be counted as qualifying employees for job creation purposes. All 10 positions must be filled by U.S. citizens, lawful permanent residents, asylees, refugees, or other individuals with valid employment authorization.

### 2. Do construction jobs count toward the EB 5 job creation requirement?

For direct investors, construction jobs generally do not count because they are temporary positions. For regional center investors, construction phase spending generates indirect and induced jobs that can be counted through an accepted economic model such as RIMS II or IMPLAN, even though the construction work itself is temporary. This is one of the primary advantages of investing through a regional center.

### 3. What economic models does USCIS accept for job creation analysis?

USCIS accepts RIMS II (maintained by the Bureau of Economic Analysis) and IMPLAN (a private sector modeling tool) as the two most common economic methodologies for EB 5 regional center job creation analysis. Other methodologies may be accepted if they are based on sound economic principles and prepared by a qualified economist, but RIMS II and IMPLAN are the standard.

### 4. What is the minimum number of hours per week for a full time EB 5 job?

Under 8 CFR 204.6(e), a full time position requires a minimum of 35 hours of work per week. Part time positions, even if combined, do not satisfy the requirement. The position must also be permanent, indefinite, or expected to last at least two years.

### 5. What happens if my project creates only 8 jobs instead of 10?

USCIS may deny your I 829 petition if you cannot demonstrate creation of 10 qualifying jobs. However, if you can show that your commercial enterprise is operational and that the remaining jobs will be created within a reasonable period, USCIS may issue a request for evidence rather than an outright denial. Your attorney should monitor job creation throughout the conditional residence period and address shortfalls early.

## 6. How does USCIS verify job creation at the I 829 stage?

For direct investments, USCIS reviews payroll records, W 2 forms, I 9 employment verification forms, quarterly wage reports, and tax returns to verify that 10 full time employees are on staff. For regional center investments, USCIS reviews an updated economic analysis prepared by a qualified economist demonstrating that the invested capital has generated at least 10 indirect and induced jobs per investor through an accepted methodology.

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