

Memorandum



DATE October 17, 2008

TO Members of the Economic Development Committee:
Ron Natinsky (Chair), Tennell Atkins (Vice-Chair), Dwaine Caraway, Jerry R. Allen,
Sheffie Kadane, Mitchell Rasansky, Linda Koop, Steve Salazar

SUBJECT **Attracting Foreign Investment as Part of Dallas' Economic Growth Strategy:
The EB-5 Program**

On October 20, 2008, the Economic Development Committee will be briefed on the "Attracting Foreign Investment as Part of Dallas' Economic Growth Strategy: The EB-5 Program".

A copy of the briefing is attached. Staff will be available at the meeting to answer questions.

Should you have any questions or concerns, please contact me at (214) 670-3314.


A.C. Gonzalez
Assistant City Manager

Attachment

C: The Honorable Mayor and Members of the City Council
Mary K. Suhm, City Manager
Ryan S. Evans, First Assistant City Manager
Deborah Watkins, City Secretary
Thomas Perkins, City Attorney
Craig Kinton, City Auditor
Judge Victor C. Lander, Judiciary
David O. Brown, Interim Assistant City Manager
Ramon Miguez, P.E., Assistant City Manager
Jill A. Jordan, P.E., Assistant City Manager
Dave Cook, Chief Financial Officer
Jeanne Chipperfield, Interim Budget Director, Office of Financial Services
Karl Zavitkovsky Director, Office of Economic Development
Hammond Perot, Assistant Director, Office of Economic Development
George Chee, Assistant Director, Office of Economic Development
Helena Stevens-Thompson, Assistant to the City Manager

Attracting Foreign Investment as a part of Dallas' Economic Growth Strategy: The EB-5 Program



Economic Development Committee

October 20, 2008

Overview (1/3)

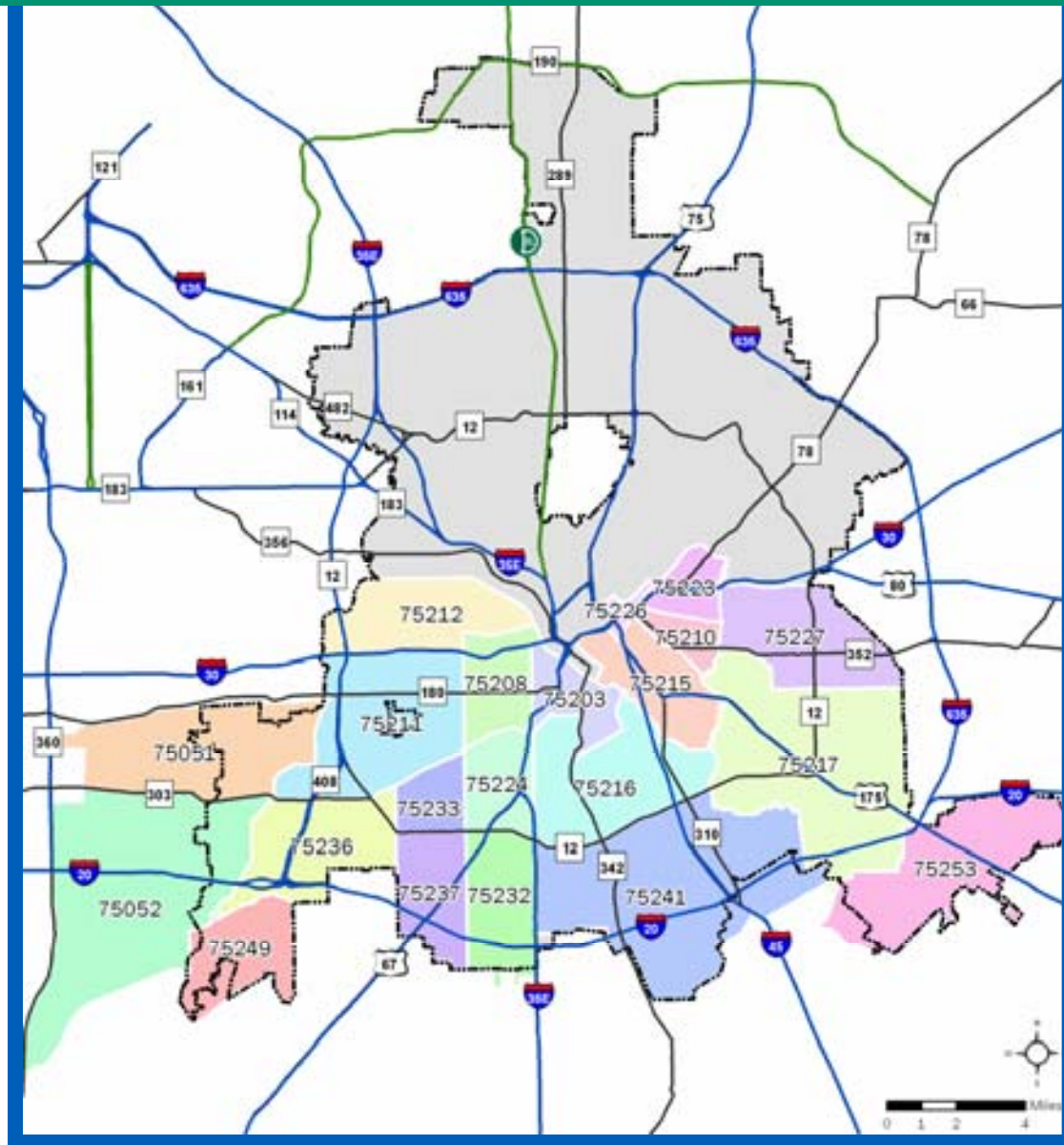
- ★ Employment Based visa program (EB-5) provides a new source of foreign capital that can be aligned with Dallas' Public Private Partnership Program to fuel the City's economic growth strategy with a focus on Southern Dallas
- ★ EB-5 program requires foreign nationals to invest \$1 million (\$500k in Targeted Employment Areas) and create a new enterprise that generates 10 full time jobs.
 - USCIS grants two year conditional green card which converts to permanent status upon compliance with investment/job creation criteria



Overview (2/3)

- ★ Selection of an **experienced, independent EB-5/DRC Fund Management Team** to develop investment parameters aligned with Dallas' development priorities and provide oversight to meet SEC/USCIS requirements is **critical to program's success**
- ★ There is no financial cost to the City

Dallas as a Regional Center



★ See Appendix 2 for more information on Targeted Employment Areas

Overview (3/3)

- ★ A pilot program was established within EB-5 to create **Designated Regional Centers (DRCs)** to promote economic growth in focused geographic areas
 - Permits investor job creation requirement to be fulfilled through investment in an approved DRC program fund.
 - Serves as a tool to attract investors and gives us a leg up on the suburbs and national competitor cities

Purpose

- ★ To provide an **overview** of EB-5 and the Designated Regional Center (DRC) Pilot Program and discuss eligibility requirements
- ★ To explain how a DRC is formed, review managing entity requirements and previously approved organizational models
- ★ To outline challenges of the DRC program model
- ★ To recommend an outsourced investment fund model and a RFQ selection process
- ★ To promote the benefits of the EB-5 program partnership
- ★ To seek **Economic Development Committee** approval to initiate an **EB-5 Regional Center** application and to move forward with an RFQ to select a fund management team

Background (1/2)

- ★ The Immigration Act of 1990 creates Employment-Based visa program (EB-5)
 - Allocates **10,000 visas annually**
 - Requires foreign nationals to invest \$1 million (\$500k in Targeted Employment areas) and form a new enterprise that **creates 10 full time jobs**
 - Grants two year conditional green cards that convert to permanent status when investment and Job creation criteria are met (See [Appendix 1](#), EB-5 Immigration Process)
- ★ Congress modified EB-5 in 1993 to include a **pilot program for Designated Regional Centers (DRCs)**
 - Allocates **3,000 visas annually** (of 10,000 total)
 - **Renewable every 5 years** – currently scheduled to expire March 5, 2009
 - Same investment requirements
 - **Permits employment creation** either through jobs generated directly by the enterprise or **indirectly** through the multiplier effect of DRC
 - Same Green Card benefits.

Background: Other Foreign Investor Eligibility Requirements (2/2)

- ★ Investment in a new commercial enterprise
- ★ Capital investment of \$1 million (\$500k in TEA – See [Appendix 2](#))
- ★ Capital funds must be derived by lawful means
- ★ New enterprise must benefit the U.S. economy
- ★ New enterprise must create full time employment (35 hours/week minimum) for at least 10 U.S. workers
- ★ Investor must have a policy-making role in the new enterprise

How is a DRC established?

- ★ Sponsor entity must submit an application to USCIS
- ★ Application requirements must include:
 - Description of geographical focus
 - Explanation of how DRC will promote economic growth
 - Detailed information on amount and source of capital commitments
 - Description of sponsors' promotional efforts
 - Projections on how the DRC will positively impact the regional or national economy
 - (Supported by economically or statistically valid forecasting tools)
 - Organizational Structure of DRC

DRC Managing Entity Requirements

- ★ The pilot program permits **private organizations, non-profits, and governmental agencies** to be certified as regional centers if they meet certain regulatory criteria.
- ★ A Regional Center must:
 - Administer, oversee and manage the regional center such that it monitors “**all investment activities**” under the center’s sponsorship;
 - **Maintain records, data and information** on a quarterly basis in order to report it to **USCIS** upon request year to date for each federal fiscal year.

Approved DRC Organizational Models

- ★ 21 regional centers approved
- ★ Three Organizational Models
 - A City's private non-profit development organization partners with for-profit investment promotion company
 - Philadelphia Industrial development Corp. partners with CanAm Enterprises who is exclusive promoter of 4 separate DRCs
 - **Private, For-Profit Investment Sponsor**
 - Capital Area Regional Center JOB Fund, LLC
 - DC Metro Area and American Life, Inc., Seattle
 - **City outsources management of DRC to Private Equity Fund**
 - City of New Orleans/Noble Outreach LLC

Challenges of the DRC Program

- ★ Scale of EB-5 Market is small in comparison with overall private fund management market
- ★ The amount of investors associated with Regional Center investments subject the potential firm to complex SEC filing requirements
- ★ Investment firm must accommodate large number of investors and comply with complex immigration rules and regulations
- ★ See [Appendix 3](#) for more information

Outsourced Fund Management Model Recommended (1/3)

- ★ Propose a RFQ process to select and experienced investment management team with relevant skill sets to manage/operate the DRC (RFQ to be drafted with CAO and Procurement Guidance)
- ★ Critical RFQ capacities include:
 - Administration/Compliance
 - Fund Raising
 - Investment underwriting
 - Alignment with City of Dallas Development priorities
 - Stand alone capital structure (No City funding)
 - Governance

Outsourced Fund Management Model Recommended (2/3)

Benefits to this approach include:

★ **Financial Accountability and Transparency**

- Private investor funds are never commingled with public funds but,
- The City secures the public benefit of attracting EB-5 capital to its economic development priorities.

★ **Limited Liability & Minimal Oversight by City**

- The competitive bid/RFQ process enables the city to require the selected firm to prove its capacity to comply with applicable immigration, securities, and other statutory and regulatory controls, without day-to-day city oversight, limiting the city's exposure to liability.

★ **“Dallas-Only” Investments**

- The competitive bid/RFQ process would permit the city to require the selected firm to limit its EB-5 investment portfolio to businesses located within city limits.



Outsourced Fund Management Model Recommended (3/3)

Benefits continued...

★ Capital for Dallas' Targeted Development Priorities

- The city can require the selected firm to invest solely in businesses and projects within Dallas' identified economic development priorities;

★ Enhanced Job Creation Potential

- The city's regional center can attract EB-5 investors by offering (through the selected firm), a "fund of funds" that invests in multiple companies, so that investors can diversify their risk and at the same time be assured that the direct and indirect job creation requirement will be met.

★ Flexibility

- Proposed EB-5 investor program works with or without a DRC, but a DRC helps streamline the process



Benefits of the EB-5 Program Partnership

- ★ Aligns a new source of lower cost equity capital with the City's Public Private Partnership Program and increases investment in Dallas' underdeveloped communities
- ★ Helps achieve goals of Mayor's Southern Sector Task Force
- ★ Creates international name recognition for Dallas and attracts foreign high-net worth investors
 - Initial investment in EB-5, but potential to invest additional funds after receiving permanent resident status
- ★ Creates Jobs



Recommendations and Next Steps

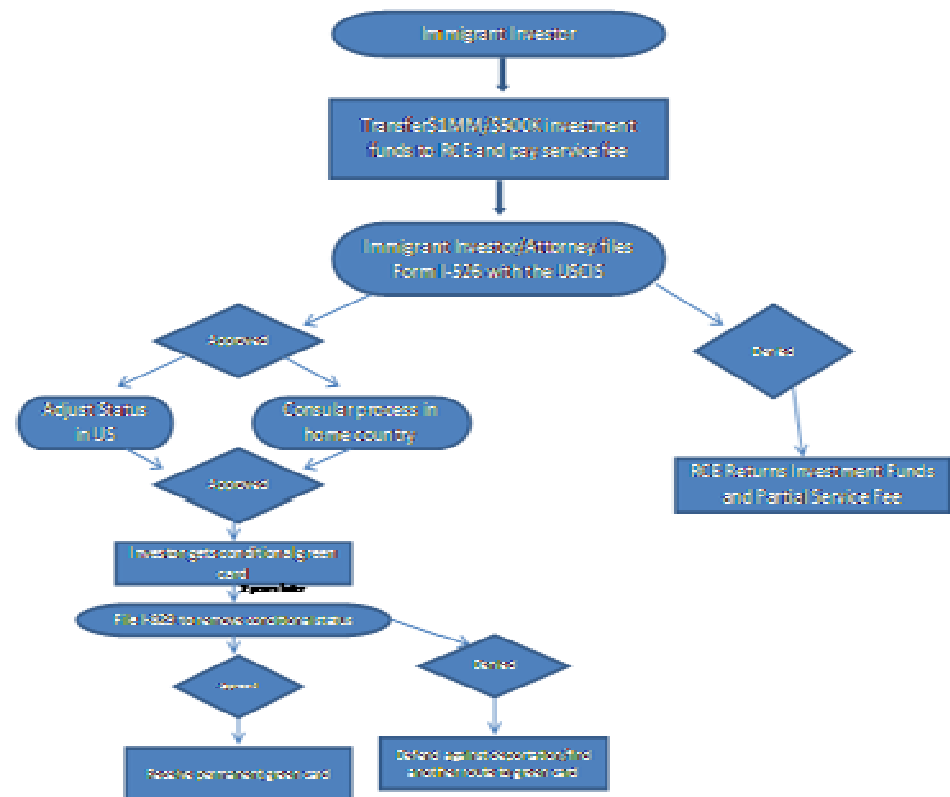
- ★ Approval from the Economic Development Committee and City Council (11/10/08):
 - Initiate an EB-5 Designated Regional Center application
 - Target Date: 11/15/08
 - Prepare and issue an RFQ to select an investment fund team to manage and operate the EB-5 program: (No Financial Cost to the City)
 - Target Date: 11/15/08

Questions?



Appendix 1 – EB-5 Immigration Process

- ★ Transfer investment to RC
- ★ Approvals from USCIS
- ★ Conditional Green Card
 - Two years of meeting all requirements
- ★ Permanent Green Card



Appendix 2 – Dallas Targeted Employment Areas (TEA) (2/2)

- ★ Targeted employment areas (TEAs) were a key element of the original 1990 legislation, creating the EB-5 investor visa.
- ★ A TEA is either a rural area, or a high unemployment area.
- ★ Southern sector of the City of Dallas, with an average unemployment rate 150% of the national average, qualifies as Targeted Employment Areas for EB-5 purposes.

Appendix 3 – Challenges: Scale of EB-5 Market ^(1/2)

EB-5 Market

- ★ The maximum amount of EB-5 capital that could be raised in a given year, nation-wide is **\$3 billion**
 - \$1 million per investor x 3,000 visas = \$3 billion
- ★ Since 1993, 83 investors have immigrated through the RC program.
 - Total capital invested was \$38 million or 1.4% of the total potential capital available.
 - On average, in FY 07 each RC attracted 4 investors, i.e. \$4 million in capital

Private Capital Management Market

- ★ During FY 07 \$313 billion in private capital was raised by nearly 400 investment funds. At least 76 of the funds reported raising over \$1 billion.
- ★ Conclusion: \$3 billion is a large sum of money, but in terms of the overall fund management market, it is relatively small amount of potential available capital that must be gathered from wildly disparate and numerous sources.



Appendix 3 –

Challenges: SEC Securities Law Complexities (2/2)

- ★ The Securities and Exchange Act of 1933 and the Investment Advisors Act of 1940 impose many limitations and obligations on fund managers.
 - In order to avoid being deemed a “public offering,” and thus subjected to strict SEC rules, a private investment fund must have less than 99 investors.
 - The management team may not serve as an advisor to clients that exceed a statutory maximum without registering their firm as an investment advisor with the SEC; which triggers numerous other compliance and reporting requirements that most fund management teams seek to avoid
- ★ Conclusion: It is important that the fund management team selected must be very familiar with the SEC requirements and be able to demonstrate compliance