

EB-5 Program Extended as-is through December 11, Increased Minimum Investment Amounts Likely Thereafter

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PRACTICES Immigration, International, Labor and Employment

On September 30, the U.S. House of Representatives passed a Continuing Resolution that will fund the government and extend the Immigrant Investor (EB-5) Pilot Program through December 11, 2015. The short-term extension will allow lawmakers seeking to reform the EB-5 program additional time to refine and advance legislation that would make investing in the program more difficult.

As background, Congress created the EB-5 program in 1990 to encourage foreign investment in the U.S. economy. The program was fairly underutilized until the 2008 recession, when banks stopped lending and the real estate industry began to seek alternative capital sources to finance projects. EB-5 funding is now a key tool for developers and has resulted in an estimated \$12 billion of capital investment from 2008-2014 and has been credited with creating more than 85,000 full-time U.S. jobs since 1990.

As it stands now, the EB-5 program provides permanent residence to foreign investors who commit \$500,000 (if the funds go to a project in a high-unemployment area (“TEA”)) or \$1 million (for projects located elsewhere) to a new business that employs 10 U.S. citizens or lawful permanent residents full time. The EB-5 investment may be direct, whereby the investor establishes the new business and hires the necessary employees him or herself, or passive, through a designated Regional Center. Regional Centers focus on promoting economic growth in specific geographic areas, most often in those with high unemployment. The Regional Center option is especially attractive because it requires less active involvement by investors in directing the enterprise and because it allows for indirect job creation. As a result, Regional Center-based investments accounted for 97 percent of all EB-5 investments for FY2014.

Legislation proposed in the Senate in reaction to a perceived lack of rigorous oversight of the Regional Center program would increase the minimum investment from \$500,000 to \$800,000 for TEA investments and would increase the non-TEA minimum investment from \$1 million to \$1.2 million. It would also impose several restrictions on the calculation of indirect job creation. The legislation is reported to have strong support from both Democrats and Republicans.

Investors considering pursuing permanent residence through the EB-5 program can take advantage of the short-term extension by filing their immigrant petitions before December 11. There is no guarantee that the EB-5 program will be reauthorized thereafter, and if it is, changes to the minimum investment amounts and job creation calculus are likely.

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