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The Benefits Of Permanently Authorizing EB-5

Congress temporarily extended the EB-5 regional center program to allow qualifying foreign investors to apply for permanent residency until September 2016. Though increasingly important to major developers as a major source of capital, Congress temporarily reauthorized the regional center program in its present format, but additional changes to the program are expected to occur before next September.

Background

Originally created in 1990, the EB-5 immigrant investor program allows foreign nationals to qualify for permanent residency (that is, apply for a 'green card') based on their at-risk investment into a job creating new commercial enterprise within the United States. There are two main methods for foreign investors to qualify for permanent residency under the EB-5 program: with an investment that directly creates jobs or, alternatively, by investing in projects associated with a regional center whose collective investment directly or indirectly creates jobs.

In 1993, Congress created the EB-5 regional center pilot program, which permits the U.S. Citizenship and Immigration Services to designate entities as regional centers eligible to accept EB-5 investments from foreign investors. Investment made through a regional center allows foreign nationals to meet the job creation requirement with either direct jobs or indirect jobs. Once the investment is made and petition for permanent residency is approved by the USCIS, the investor receives conditional residence status for a period of two years. This conditional status is removed and unconditional permanent resident status is awarded if the investor shows at the end of such period that the investment has been maintained and that the required jobs have been created or saved. The time to attain this status is relatively short compared to other green card application options. The required investment is \$1 million, but this amount is reduced to \$500,000 if the investment project is located in a rural or "targeted employment area (TEA)," thereby creating jobs for Americans in regions with high unemployment.

Creating Jobs in the U.S.

The EB-5 regional center program has become an effective tool for fostering investment and creating jobs within the U.S. Stakeholders in major development and construction projects increasingly rely on funds from regional center investments, especially after the economic downturn of 2009 and ensuing unavailability of traditional loans. By aggregating investment funds for specified projects, a regional center project developer can utilize debt or equity funding provided by foreign investors who are attracted to make investments with the promise of a desirable immigration status. Currently, more than 90 percent of all EB-5 petitions involve foreign investment into regional center projects. Since 2008, the EB-5 program has generated \$11.92 billion in foreign direct investment across the U.S. in sectors such as energy, health care, construction and hospitality. Impressively, from 2010 to 2013, EB-5 investments have annually created or supported an average of 29,300 American jobs.[1]



Changes to the EB-5 Program

On Dec. 15, 2015, Congress extended the EB-5 regional center program as part of the omnibus spending bill, allowing foreign nationals to utilize regional center investments in petitions filed before September 2016. Changes to the EB-5 program — with particular focus on the regional center program — are widely expected to occur in 2016. Proposed bills may extend the EB-5 regional center program for a period of five years or more, or even indefinitely. However, any longer term extension bill will assuredly seek to amend a number of key aspects of the current program. For example, proposed changes in the EB-5 program would likely address the following:

- **Increase minimum investment amount:** Lawmakers are expected to increase the minimum amount of investment from \$500,000 to \$800,000, and potentially raise investments in non-TEAs to a higher threshold from \$1 million to \$1.2 million.
- **Regional center oversight and compliance:** Stakeholders can expect greater government scrutiny, whether in its increased authority to investigate fraud and increased project oversight, as well as heightened reporting and securities compliance requirements.
- **Higher government fees:** It is expected that regional centers will be required to pay \$25,000 each annually, to fund these changes.
- **Changes in the definition of TEA:** Modifications in the program will likely adopt a California-type model to determine what qualifies as a TEA, which will also include infrastructure in its definition.
- **Case processing times:** The USCIS will aim at cutting current processing times by more than half and to possibly allow premium processing in the future.
- **Source of funds criteria:** Investors' mandatory documentation requirements and limiting 'gift' options are also expected to occur.
- **Concurrent filing options:** Further processing changes could allow investors to concurrently file the two phases of the permanent residency process described above (I-526 and I-485).

Additional changes may arise with effective dates, retroactivity, increased visa allocation and job creation requirements. Finally, EB-5 reform may be included in comprehensive immigration reform bills, subjecting the final rules to further changes. While it is an election year, which traditionally means any significant legislation is unlikely, it remains important to understand these changes may occur at any time, and not just in September 2016. While we anticipate these changes in the longer term, we are likely to see an increased number of petitions filed in the coming year which will add to the already significant backlogs. In the interim, Congress' "as-is" extension means investors may choose to invest in advance of any changes, developers can still market their projects at \$500,000 and regional centers can continue on their current path.

Driver of Economic Development

As developers become more familiar with the EB-5 program, we have seen an increased use of EB-5 capital for the development of real estate and other projects, including the combination of EB-5 with federal and state economic incentive programs such as low income housing tax credits (LIHTC) or new markets tax credits (NMTC). EB-5 funding is an excellent source of gap financing to assist projects which are in need of additional capital or financing to become financially viable. The public sector has also realized that EB-5 can be an important source of funding for high-priority projects. Recently, Michigan, Miami and Puerto Rico have moved forward in establishing their own public regional centers, showcasing a growing trend in publicly owned and operated centers looking for EB-5 as an additional source of capital.

A publicly owned regional center can be a great tool to complement existing public and private financing sources for private and public uses. As more states and municipalities see the advantages of EB-5 to complement their traditional funding efforts, we expect to see an increase in the number of public entities taking advantage of this alternative financing source by creating their own publicly owned regional center or partnering with existing private centers to provide EB-5 financing. In so doing, they are leveraging the investment dollars of foreign investors into important projects for our municipalities and creating jobs.

Conclusion

The EB-5 program has been a great engine for economic development and job growth in the U.S. The amount of foreign direct investment and jobs created as a result of the program are the best examples of its success. For example EB-5 investments in fiscal year 2013 alone contributed more than \$3.58 billion to the gross domestic product of the U.S. and supported over 41,200 U.S. jobs, at no cost to the U.S. taxpayers^[2]. Nonetheless, the program should be permanently authorized and delaying such action creates an unnecessary uncertainty that may hinder the program's economic contribution to the U.S. economy. Although we expect the program to continue to grow during 2016, it is important that Congress acts sooner rather than later to permanently authorize the program and implement reforms that help maximize the programs economic impact in the U.S. economy.

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[1] According to Invest in the USA (IIUSA), the industry trade association for the EB-5 program.

[2] According to IIUSA.