

Extended Again: No Policy Changes for EB-5, Yet

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In September, as part of federal spending legislation, the EB-5 Regional Center Program received a short-term extension through December 8, 2017. The Program has been similarly extended, with no change in policy, on multiple occasions since its previously scheduled expiration date of September 30, 2015.

By way of background, Congress established the EB-5 Program in 1990 to stimulate the U.S. economy through job creation and capital investment by foreign investors seeking U.S. resident visas. Congress later enhanced the EB-5 Program with the introduction of the Regional Center Program, which sets aside EB-5 visas for participants who invest in commercial enterprises associated with federally approved regional centers organized to promote economic growth. Although neither limited to, nor designed specifically for, commercial real estate finance, the EB-5 Program has been embraced in recent years as a viable financing source as part of the overall capital stack for development projects.

Developers, investors and other stakeholders continue to wait for answers as to the future of the EB-5 Program. So what may change?

Targeted Employment Areas (TEAs): Potential reform may come as to how Targeted Employment Areas are drawn under the Program, and how they may be regulated to balance economic development between urban and rural areas. TEAs can be areas of high unemployment (150% of national unemployment rates), or they can be rural areas. EB-5 projects located in TEAs have perceived advantages over those that are not in TEAs, primarily due to the lower minimum investment required of immigrant investors for projects located in TEAs. In recent years, the vast majority of TEA-based projects have been in urban areas meeting the unemployment criteria, with rural areas seeing less benefit from the Program. In a number of cases, the manner in which these urban TEAs have been designated (in a process described by some critics as “gerrymandering”) has called into question whether the Program is meeting its stated objectives.

Investment Thresholds: Under the Program, investors must commit \$1 million to a project or \$500,000 if the project is located in a TEA. These thresholds have not changed in over 25 years, and a number of legislative proposals have been made in recent years to raise these thresholds. If these thresholds increase, EB-5 project sponsors may see the pool of immigrant investors decline. They also may see EB-5 capital becoming more expensive as immigrant investors seek a greater return on their more substantial investment.

For questions about the information contained in this advisory, please contact your usual Goulston & Storrs attorney, or one of the members of the firm’s EB-5 Group listed below.

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