

## Immigrant Investors Program Up for Renewal

By *Rebekah Mintzer*

The clock is ticking for a federal program that helps foreigners and their families get green cards in exchange for investing in U.S. business ventures. Unless Congress acts before the program's Sept. 30 expiration date and passes either a reauthorization bill or a resolution to continue the EB-5 visa regional center program temporarily, the fate of many projects will be uncertain.

The EB-5 has become an increasingly popular source of opportunity for businesses—often in the area of construction and development—looking to fund a new project. Along with opportunity though, there has also been controversy.

To get an EB-5, foreign investors can fork over \$500,000 to a business venture that is part of a federally designated “regional center.” These regional centers have to be categorized as “targeted employment areas,” which must either be rural or have a high unemployment rate. In order for a project to pass muster, each foreign investor must prove their share created at least 10 new jobs. There is also a less popular option: foreigners who are looking to kick in \$1 million or more can invest in a project outside a regional center.

David Schubauer, a partner at law firm Bilzin Sumberg explains that the EB-5 regional center program didn't get much notice when it first began back in 1990s, but all of that changed when the financial crisis hit. “This just started becoming a popular avenue to finance projects in the downturn,” he says. “Initially it was viewed as one of the best alternatives for raising capital that's needed to build a project when traditional bank financing dried up in the recession.”

And even as the financial situation in the U.S. has improved, it's remained popular. According to the EB-5 Investment Coalition, a bipartisan advocacy group that supports reauthorization of the program, in the year 2013 alone, the program generated at least \$1.6 billion in investment and 31,000 jobs. In 2014, U.S. immigration authorities actually ran out of EB-5 visas, due to overwhelming demand, mostly from Chinese nationals.

From the corporate perspective, seeking funding for ventures via EB-5 has some advantages. “It's a tremendous source of capital if you can get through the administrative, regulatory and time-related issues,” says Steve Klein, a partner with accounting firm Gerson Preston. He explains that because foreign investors are already getting an asset they want out the deal—a green card—they aren't quite as concerned as other investors might be in getting the highest rates of return financially.

That's not to say there aren't downsides too. In between managing the financial and immigration facets of an EB-5 related deal, there can be a lot of paperwork and administrative work. Klein says that in his mind the biggest risk for companies on the receiving end of these investments is time. “Because they need the capital, it's time sensitive,” he says. “There's a whole administrative process, and putting investors together can be daunting.” If the current backlog of visa applications continues, that could also interfere with the EB-5 process and pose a problem for both companies and investors.

Then, there's the broader controversy about the regional centers program, which is likely part of the reason why it hasn't been so easy to reauthorize. "Some people think that some of these projects don't really create new jobs," says Schubauer. Advocacy groups like the More American Jobs Alliance have complained that the program doesn't deliver on its jobs promises because it counts "indirect jobs" to reach the quota. There have also been accusations that developers are "gerrymandering" development zones to include lower income areas, so they can create targeted employment areas and take advantage of EB-5 investment opportunities. Then, the developers allegedly don't provide any value or jobs back for the people living in the low-income areas that have been included in the zone.

There is also concern that the entire EB-5 program might be vulnerable to fraud. In July, the U.S. Securities and Exchange Commission busted a California-based energy company for defrauding EB-5 investors in Asia in a \$68 million scheme. And a report released by the U.S. Government Accountability Office in August recommended that U.S. Citizenship and Immigration Services make serious changes to its system in order to better protect EB-5 participants from fraud.