

What the new reformed EB-5 visa program brings along

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After over 8 months of suspension, the popular program is back with long-term reauthorization and many welcome changes

By Suresh Rajan

President Joe Biden signed the omnibus spending bill on March 15. It included the EB-5 Reform and Integrity Act of 2022, with new regulations and a multiyear extension of the EB-5 regional center program.

This was a critical milestone for the industry. The conversation about EB-5 reform started back in 2015, at which point many issues were raised such as concerns about the minimum investment amount (which had been unchanged since the EB-5 program's inception a quarter-century earlier), the fact that rural areas just were not attracting sufficient foreign direct investment, and the overall integrity of the program.

The original form of the program was enacted in 1990 and offered what are now called EB-5 Direct investments. It was followed in 1992 by the addition of a new offering, the Regional Center program, which allows pooled investments.

Read: Will the EB-5 visa program get current by yearend? (November 29, 2021)

Originally intended as a pilot model rather than a permanent version, the Regional Center program has since its creation been extended or reauthorized, on average, every three to five years.

That pattern held up until 2015, when the program reached its pinnacle of popularity and caught the attention of reformers. Since 2015, the program received only short extensions—not the usual reauthorizations—until it was suspended in June 2021.

Now, after more than eight months of frustration and legislative work, new rules are published, some of which have gone into effect immediately and others will in upcoming weeks.

The legislation is heavily based on the Grassley-Leahy bill that LCR has supported for the last two years. It will force the industry to adhere to a higher level of professionalism and require that all investors be given the disclosure and service that LCR has always delivered to its own clients.

The most talked-about change relates to the minimum investment levels, which are set to rise from \$500,000 in designated Targeted Employment Areas (TEAs) to \$800,000 for TEA, rural, and infrastructure projects and from \$1,000,000 for non-TEA projects to \$1,050,000.

Read: EB-5 investor visa program sees continued delay (December 6, 2021)

The inclusion of rural and infrastructure projects is a new addition to the program. These new categories will receive prioritized processing.

Twenty percent of all EB-5 visas granted in a given year will be reserved for petitions based on EB-5 investments in the new rural category; another 10% of EB-5 visas will be allocated to individuals who invest in high-unemployment areas; and 2% of EB-5 visas will be allocated to those who have invested in infrastructure projects.

Two new fees are being created to cover the costs of a new integrity enforcement fund created under the new legislation. The fund will cover the costs of audits and site visits and to ensure that participants comply with immigration laws. The fees are a \$20,000 annual regional center fee (to be covered by each regional center) and an additional \$1,000 investor filing fee.

Other integrity measures, as described in the new legislation, aim to provide greater protections to investors, including investor reporting and federal auditing of regional centers.

Read: When will the pause in the EB-5 regional program end? (November 17, 2021)

Another important integrity measure is the protection of existing investors against the future expiration of the EB-5 Immigrant Investor program, so that the uncertainty that EB-5 applicants faced in the last eight months will be avoided.

One last area of concern for our clients is processing times for EB-5 applications. Currently, USCIS states that it takes from 53.5 to 77.5 months to process an I-526 petition (the initial application) and from 39 to 72 months to process an I-829 application (to

remove the conditions on the conditional green card and to issue the permanent green card).

While there is yet no clear resolution to the extensive processing times we currently face, the new legislation will require the director of the Department of Homeland Security to conduct a study to determine how to achieve processing time goals of under six months for I-526 petitions and under one year for I-829 petitions. The DHS and USCIS are expected to attend to this important issue and to work hard to resolve it.

Another positive change that will greatly impact many of our clients relates to what is called “concurrent filing.” This means that those already in the United States under a different visa category can, when they apply for the EB-5 program, file for an adjustment of status after filing their I-526 petition.

Read: EB-5 Reform and Integrity Act of 2022 Set To Become Law (March 11, 2022)

This allows them to receive travel and work authorization as they await an I-526 approval. I wish our clients had that option before the lapse last June, but those who are waiting for an I-526 approval can file for an adjustment of status right now. It will be a life changer for them.

In addition to all these changes—and the legislation contains more changes than are enumerated here—this EB-5 reform comes with long-term reauthorization that will reinstate the program until September 30, 2027.

We look forward to entering this new era of a reformed EB-5 program and helping people achieve their full potential if the path they choose is to move to the United States.

(Suresh Rajan is the Founder and Executive Chairman of LCR Capital Partners)

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