



THE IMPLICATIONS OF AMERICA'S EB-5 PROGRAM

The EB-5 program, created in 1990 to spur investment and create jobs in the United States, provides visas to foreign nationals willing to invest \$1 million into a commercial enterprise located within the nation's boundaries.

FOR U.S. CONSTRUCTION

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Investment capital, like water, tends to follow the path of least resistance. Investors throughout the world are constantly looking for places where their money can grow with some semblance of predictability.

In recent years, the United States has often proved to be the global investment capital destination of choice. Its combination of more stable economic growth than in much of the advanced world, relative lack of burdensome regulation, rule of law, and purposeful monetary policy has resulted in sharp global capital inflows into U.S. equity, bond, and real estate markets. In 2015, global investment in U.S. commercial real estate surged, helping to drive up property value and trigger a new round of private construction spending.

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Despite enjoying institutional advantages with respect to attracting foreign capital, lawmakers have viewed it as appropriate to create additional vehicles designed to attract capital inflows to the United States. The EB-5 Immigrant Investor Visa Program represents one of these mechanisms.

The EB-5 program was created in 1990 to spur investment and create jobs in the United States. It provides visas to foreign nationals willing to invest \$1 million into a commercial enterprise located within the nation's boundaries.¹ These visas often represent the first step toward obtaining a green card and eventual U.S. citizenship.

As with seemingly all government programs, there are stipulations. The new business must create at least 10 full-time jobs for U.S. citizens. In other words, foreign investors can't simply start a business in the United States and exclusively hire workers from their nation of origin or even immigrants to the United States who have yet to obtain citizenship.

Additionally, EB-5 investors must meet one of three requirements:

1. They must create a new commercial enterprise.
2. They must invest in an existing enterprise that would expand to 140 percent of its pre-investment net worth and/or its number of employers as a result of that investment.
3. They must invest in a troubled business to preserve jobs that already exist.²

In 1992, the United States expanded the program to foreign investors who contribute at least \$500,000 to a regional center.³ A regional center is an organization that sponsors investment programs for EB-5 investors. Typically, they are attached to rural areas and/or places with high unemployment levels.

The United States caps the total number of EB-5 visas at 10,000, setting aside 3,000 specifically for those who invest in regional centers. Any one country can only use up to 7.1 percent of the total number of visas, although they may obtain more if other countries do not reach their respective quotas.⁴

According to data compiled by Invest in the USA (IIUSA), a national trade association for EB-5 regional centers, the number of visas issued remained subdued during the very early years of the 21st century, hitting only 349 by fiscal year (FY) 2005.⁵ That number expanded rapidly during the ensuing years as economic growth accelerated and real estate activity flourished. By FY2009, the number of visas issued had exceeded 4,200 before dipping sharply

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MULTIFAMILY DEVELOPMENT HAS RISEN IN IMPORTANCE TO EB-5 INVESTORS IN RECENT YEARS.

the next year as the Great Recession took its toll on global capital and investor confidence.⁶

The EB-5 program's popularity has surged more recently. By FY2014, the number of EB-5 visas issued leapt to nearly 10,700. The number of foreign investors from mainland China expanded by more than 30 percent in FY2014 alone, helping to push the number of visas issued above the 10,000 limit for the first time in the program's history. As of FY2016, there were 9,947 visas in use by foreign investors.⁷

Chinese investors have been particularly keen to take advantage of the EB-5 program in recent years. Part of this is attributable to the sheer size of the Chinese economy, now the world's second largest, as well as to the enormous amounts of investable wealth found there. Since other nations have not reached their respective quotas in many instances, Chinese investors have had access to a significant fraction of total EB-5 opportunities. In FY2014, Chinese investors acquired approximately 85 percent of all issued EB-5 visas. Of the 9,947 visas issued for FY2016, 7,516 were issued to nationals from mainland China. The next closest country was Vietnam with 334 issued visas.⁸

Predictably, the amount of foreign investment associated with the EB-5 program has expanded in conjunction with visa issuances. An early program investment peak occurred in FY1997, when investment totaled \$555 million. Investment declined thereafter. In fact, the level of EB-5 investment did not reach its prior high until FY2009, when it reached approximately \$633 million. But by FY2015, program investment totaled \$4.4 billion. In FY2016, investment stood at a still lofty \$3.8 billion.⁹

Implications for construction in the United States

Although EB-5 investments need not be related to real estate and construction, many are. According to data compiled by IIUSA and NES Financial, from 2010 to 2013, almost 30 percent of all foreign direct investment was attached to "resorts, casin-

os, and hotel" projects. Those types of projects continued to represent the largest single share of investment in 2014 and 2015. In 2015, these types of projects registered an EB-5 share of 27 percent.¹⁰

Additionally, multifamily development has risen in importance to EB-5 investors in recent years. During the early years of the current decade, about 8 percent of EB-5 total foreign investment was directed toward multifamily projects. By 2015, multifamily investment represented the second leading category for EB-5 investors, with a program share of 22 percent.¹¹ Real investment share has risen in part because foreign investors have been shying away from investments in retail establishments in recent years.

EB-5 investment tends to be concentrated in certain parts of the nation, with California leading the way. This may be attributable in part to the fact that more than 1.35 million Chinese-Americans live in California, creating natural ties between the Golden State and the Middle Kingdom. New York represents another major market for EB-5 investors, as do a number of other Tier 1 real estate markets.¹²

The program is not without its critics. Senators Chuck Grassley (R-IA) and Diane Feinstein (D-CA) introduced legislation in February 2017 that would have eliminated the entire visa program, although it had little chance of succeeding.¹³ They claim the visas create a way for wealthy foreign nationals to purchase U.S. citizenship. That may or may not be true. Additionally, in early May, President Trump signed the Consolidated Appropriations Act (H.R. 244), which renewed the EB-5 regional center program through September 30, 2017.¹⁴ The legislation allows U.S. Citizenship and Immigration Services to continue accepting petitions from applicants based on investments through these EB-5 regional centers. Whether the program will continue after the September deadline, as well as whether it will be altered or changed in the future and the implications of either scenario for the U.S. construction industry, remains to be seen. ■

NOTES

¹“EB-5 Immigrant Investor Pilot Program,” U.S. Department of Homeland Security. Available at: <https://www.uscis.gov/sites/default/files/USCIS/Resources/Resources%20for%20Congress/Congressional%20Reports/EB-5%20Investor%20Pilot%20Program.pdf>.

²*Ibid.*

³*Op. cit.* note 1.

⁴“What is the EB-5 visa cap?” Barst Mukamel & Kleiner LLP (Aug 9, 2016). Available at: <https://bmkllp.com/what-is-the-eb-5-visa-cap/>.

⁵“EB-5 statistics,” Invest in the USA (2017). Available at: <https://iiousa.org/eb5-stats/>.

⁶*Ibid.*

⁷*Op. cit.* note 5.

⁸*Ibid.*

⁹*Op. cit.* note 5.

¹⁰“EB-5 projects list: Changing popularity trends by industry sector,” EB-5 Daily. (Feb 29, 2016). Avail-

able at: <http://www.eb5daily.com/eb-5-projects-list/>.

¹¹*Ibid.*

¹²“Economic impacts of the EB-5 investment by U.S. state (FY2010–FY2013),” Invest in the USA. Available at: https://iiousa.org/blog/wp-content/uploads/2016/08/States-EB-5-Economic-Impacts-2010-2013_FINAL.pdf.

¹³“Feinstein, Grassley introduce legislation to eliminate troubled EB-5 investor visa program,” Chuck Grassley, United States Senator for Iowa (Feb 3, 2017) (press release). Available at: <https://www.grassley.senate.gov/news/news-releases/feinstein-grassley-introduce-legislation-eliminate-troubled-eb-5-investor-visa>.

¹⁴“Congress poised to extend EB-5 regional center program until September 30 without changes,” *The National Law Review* (May 3, 2017). Available at: <https://www.natlawreview.com/article/congress-poised-to-extend-eb-5-regional-center-program-until-september-30-without>.