

Will the EB-5 Program Be Renewed, Altered or Abolished?

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On September 28, 2018, the U.S. Congress passed an appropriations bill that extended the EB-5 Immigrant Investor Program (the “EB-5 Program”) in its current form through December 7, 2018.[1] Thus, the EB-5 Program will expire on December 7, 2018, unless it is renewed once again for another couple of months to a year.

Although the EB-5 Program has been renewed every time it has come close to expiration, over the years many have called for significant reforms, or the elimination of the EB-5 Program altogether, amid concerns about fraud. Last year, the Department of Homeland Security (“DHS”) proposed changes to the minimum investment amounts and designation of targeted employment areas[2] (“TEA designations”). Under the current guidelines of the EB-5 Program, foreign investors may obtain a green card if they invest \$500,000 (rural setting) or \$1,000,000 (city setting) in a new or existing business enterprise that create at least ten full-time jobs per EB-5 investor.

However, the DHS proposed to drastically increase the minimum investment amount to \$1.35 million for TEAs, and \$1.8 million for high employment areas to “ensure that program requirements reflect present-day dollar value of the amounts established by Congress in 1990.”[3] DHS also proposed to “reform the TEA designation process to ensure consistency in TEA adjudications and ensure that designations more closely adhere to Congressional intent.”[4] Specifically, DHS proposed to, among other changes, eliminate state designations of high unemployment areas, and instead, DHS would itself determine which areas qualify as TEAs. Whether any of these proposed changes will be implemented, however, depends on the renewal of the EB-5 Program.

While it is unlikely that the EB-5 Program will be allowed to expire, it is likely to change. Stay tuned for more on any alterations to the Program.

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[1] H.R. 6157, The Department of Defense and Labor, Health and Human Services Appropriations Act, 2019 and Continuing Appropriations Act, 2019, available at, <https://www.congress.gov/bill/115th-congress/house-bill/6157/text>.

[2] A targeted employment area is “a rural area or an area which has experienced high unemployment (of at least 150 percent of the national average rate).” 8 U.S.C. 1153(b)(5)(B)(ii).

[3] EB-5 Immigrant Investor Program Modernization, 82 F.R. 4738, (Jan. 13, 2017), available at, <https://www.federalregister.gov/documents/2017/01/13/2017-00447/eb-5-immigrant-investor-program-modernization>.

[4] EB-5 Immigrant Investor Program Modernization, 82 F.R. 4738, (Jan. 13, 2017), available at, <https://www.federalregister.gov/documents/2017/01/13/2017-00447/eb-5-immigrant-investor-program-modernization>.