

# Obama administration's new EB-5 bill could cool use of program by developers

Under new proposal, investment thresholds would rise

BY KATHERINE CLARKE

**A** new proposal from the Obama administration may derail the real estate industry's EB-5 gravy train.

On Thursday, the administration proposed amending the EB-5 program to clamp down on reported abuses. If enacted, the suggested changes would likely have a cooling effect on developers' ability to leverage the program to fund projects in wealthy areas of Manhattan, sources said.

EB-5 is a federal program that grants foreign investors green cards in exchange for a minimum investment of \$500,000 in job-creating projects in the U.S. It's become one of the most popular — and most controversial — fundraising vehicles for New York developers.

As part of the reform outlined in a draft bill by United States Citizenship and Immigration Services, the agency suggested raising the minimum amount investors would need to pump in to get a green card to \$1.35 million, up from \$500,000, for projects in areas with high unemployment. For projects in areas with average or low unemployment, they would have to invest \$1.8 million, up from \$1 million.

"I don't think this goes anywhere," said Eric Orenstein, an attorney at Rosenberg & Estis TRData LogoTINY who has worked with developers raising EB-5 funds. "The increase in the limits is out of line with anything that would be commercially feasible to any investor. It makes the entire program unmarketable."

In a bid to quell claims that the program favors projects in wealthy parts of the country, USCIS also proposed eliminating states' ability to designate census tracts, which de-



velopers can cobble together in order to position their projects as being in low employment areas. That process, known as gerrymandering, allows them to attract investors at a lower price threshold.

Rather, the federal government would make the designations directly. In order to qualify as a low-employment area, the project must be located in a census tract or contiguous census tracts with a weighted average of 150 percent of the national average.

Sources said the bill might get a frosty reception in Congress, especially under a Trump administration. Trump's name adorns a new project on Bay Street in New Jersey that's partially funded through the EB-5 program.

"Presumably he has a lot of friends in real estate who use EB-5 and know that it's good for the economy," Orenstein said. "It has to go through him and I don't see him approving it."

Comments on the bill are due by April.

Developers such as the Related Companies have been lobbying hard to keep the program exactly how it is. Since January 2015, Related, whose Hudson Yards project makes use of the program, pumped more than \$1.4 million on immigration-related lobbying — more than double spent by any other user of the EB-5 program, the Wall Street Journal reported earlier this week. The program is set to expire in April after several short-term extensions. **TRD**