

The quick and dirty changes looming for EB-5

What's in store for the popular visa program?

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The wildly popular EB-5 visa program – the vehicle that offers foreign investors a U.S. green card in exchange for an investment in the U.S. economy – is set to sunset Wednesday.

While stakeholders believe the program will be renewed, lawmakers have proposed a series of reforms designed to increase oversight and enforcement and maximize the amount of dollars invested here.

New York developers remain bullish on the program: Most recently, Macklowe Properties disclosed plans to raise \$100 million in EB-5 funds for 1 Wall Street, a \$1.5 billion condominium conversion in Lower Manhattan.

Senate Republicans introduced a short-term spending bill on Sept. 22 that would, among other things, extend the EB-5 program through Dec. 11.

Nationwide, there is a \$13.2 billion pipeline of projects that received EB-5 funding, according to Mona Shah, an attorney who specializes in EB-5 matters. “If this program is not reauthorized, it doesn’t mean it ‘dies’ but obviously it’s not going to have the same impact,” she said.

Without knowing what changes loom, some developers may be holding back.

“The uncertainty has caused people to put their foot a little bit on the brake in terms of deciding on new projects,” said Neil Shapiro, a real estate partner at Herrick, Feinstein.

Here’s a rundown of some of the possible changes and how likely they are to be implemented, according to experts.

Raise the barrier for entry: Very likely

At the moment, foreign investors must pump in a minimum of \$500,000 to participate in the EB-5 program – but sources say that amount is likely to increase. Estimates range from \$800,000 to \$1.2 million. “The amount hasn’t increased in 25 years,” said Greenberg Traurig attorney Laura Reiff, which means lawmakers are likely to push for an increase this time around.

Shah agrees. “A lot of investors can afford \$500,000,” she said. “We feel like \$500,000 in today’s market is so little.”

Restrict areas for EB-5 investment: Definitely possible

Currently, EB-5 investors who fund projects in rural areas or areas with high unemployment have a lower minimum



investment. Through gerrymandering, or the practice of using contiguous census tracts, developers have been able to get projects in areas such as Midtown and Chelsea to qualify for the EB-5 program. But not everyone thinks that’s fair.

“There’s a stalemate when it comes to the TEA,” or Targeted Employment Area, as the designated zones are known, said Shah. “People on the Hill don’t want to see EB-5 hijacked by real estate only and especially not Manhattan real estate. “New York has got the mammoth amount of [EB-5 investment] right now.”

Eric Orenstein, an EB-5 attorney at Rosenberg Estis, argues that New York City should continue to qualify as a TEA.

“This is jobs creation,” he said. “If you’re building in Midtown, [workers may be] coming from the Bronx, Queens and Uptown.”

Track job growth: Extremely likely

Each EB-5 investor must create 10 permanent jobs. The program has been criticized for lax enforcement of this requirement, and Shapiro said the next iteration of the program may include a more standardized way to track job creation.

Increase regulatory compliance: Extremely likely

In recent years, several high profile cases of alleged fraud have put the spotlight on EB-5 investors and regional centers, U.S.-based organizations that act as an intermediary between investors and developers.

To shore up compliance, a series of rules is being proposed – ranging from inspections for regional centers and background checks for investors.

“Everyone should want there to be compliance,” Orenstein said. “Then there’s less bad press, it’s a more legitimate program.”