

Immigrant Investor Visa to See Regulatory Changes Soon (1)

By Laura D. Francis

Posted Feb. 25, 2019, 9:31 AM Updated Feb. 25, 2019, 4:28 PM

- New regulatory terms would funnel more money into rural, struggling areas
- Investment amounts would increase above \$1 million

An immigration program that awards green cards to foreign nationals who invest in the U.S. looks to be getting an overhaul to increase minimum investment amounts and funnel more money into rural areas.

U.S. Citizenship and Immigration Services has completed a final version of a regulation that would increase the EB-5 program's minimum investment for the first time in nearly three decades.

The final regulation went to the White House's Office of Management and Budget for review Feb. 22.

The Obama administration originally proposed changes to the program in January 2017, a week before Donald Trump took office as president. Since then, lawmakers have made attempts to overhaul the program, to no avail.

Process Not Complete

The EB-5 program provides a green card to a foreign national who invests at least \$500,000 in a commercial enterprise that creates at least 10 U.S. jobs. It's currently dominated by Chinese nationals, who face longer and longer wait times as annual caps on the visas prevent awarding them to everyone who applies.

"No decision about the regulation concerning the EB-5 program is final until the rulemaking process is complete," USCIS spokeswoman Jessica Collins said in a Feb. 25 email to Bloomberg Law.

But even as the final regulation is undergoing OMB review, the agency still is asking for Congress to take the reins. "While USCIS works to finalize regulatory changes to the program, we urge Congress to enact needed reforms to the program to protect U.S. as well as foreign investors," Collins said.

There are concerns that the regulations impose "too much too fast," Matthew Galati of Green & Spiegel in Philadelphia told Bloomberg Law Feb. 25.

The main concern from EB-5 stakeholders is the increase in investment amounts, which under the proposed rule would rise to a minimum of \$1.35 million from the current \$500,000. That would "create massive disruptions in the marketplace" and result in a rush to file visa petitions before the new requirements kick in, said Galati, who leads his firm's U.S. Investors and Entrepreneurs Division.

Once in effect, the higher amounts are likely to drive down demand for the visas, he said.

Lawmakers Urged Regulations

Sens. Charles Grassley (R-Iowa) and Patrick Leahy (D-Vt.) have been the program's main detractors, saying the current system is riddled with fraud and no longer accomplishes its goal of attracting capital to struggling areas of the country. Sen. Dianne Feinstein (D-Calif.) and former Rep. Bob Goodlatte (R-Va.) also have joined in the call to end the program in the wake of lawmakers' inability to agree on legislation to change it.

Grassley, Leahy, and Goodlatte asked the USCIS to finalize the regulations in April 2018 after their latest attempt at a bill fell through.

"The fraud, abuse and national security vulnerabilities in the EB-5 program have been well documented for years," Grassley said in a statement provided to Bloomberg Law Feb. 25. "We have tried on a bipartisan basis to fix the flaws and restore Congress's intent for EB-5. Unfortunately, well-moneyed interests that exploit the program have blocked that effort," he said.

The senator said it's "high time that the administration steps in and reform the program through regulation in the absence of a new law," and if that doesn't happen, the program should be scrapped.

A representative for Leahy didn't respond to Bloomberg Law's request for comment.

Although lawmakers generally agree on anti-fraud measures that have been proposed, the sticking point appears to be how to define a "targeted employment area." A TEA allows a visa seeker to invest \$500,000 instead of \$1 million in an area of high unemployment, usually measured by census tracts.

The states currently decide what constitutes a TEA within their districts, leading to allegations of gerrymandering to attract funding.

The USCIS proposed regulation would restrict determination of TEAs to the agency and would define it as the census tract where the commercial enterprise principally does business and all adjacent census tracts, as long as the weighted average unemployment rate for the entire area is at least 150 percent above the national average.

Galati said his firm is neutral on how to define TEAs but has concerns about the proposal to shift the TEA determination to the USCIS from the states.

With recent reports about ever-increasing processing times at the agency, "there's a real danger there that projects aren't going to be able to get their offering documents ready to go," he told Bloomberg Law.

(Story updated with additional reporting throughout.)

To contact the reporter on this story: Laura D. Francis in Washington at lfrancis@bloomberglaw.com

To contact the editors responsible for this story: Phil Kushin at pkushin@bloomberglaw.com; Terence Hyland at thyland@bloomberglaw.com

Related Articles

[Immigrant Investor Proposal Could Ease Congressional Tensions](#) (Jan. 12, 2017, 9:55 AM)

[Immigrant Investor Visa Regulations Sought as Bill Declared Dead](#) (April 6, 2018, 2:37 PM)

[Visa Decision Wait Times Reaching 'Crisis' Levels, Group Says \(1\)](#) (Jan. 30, 2019, 12:00 PM)

© 2019 The Bureau of National Affairs, Inc. All Rights Reserved

Reproduced with permission. Published Feb. 25, 2019. Copyright 2019 by The Bureau of National Affairs, Inc. (800-372-1033)