

Changes on the Horizon for EB-5 Immigrant Investor Visa Program

July 23, 2015

The Obama Administration released a report on July 15 titled “Modernizing & Streamlining our Immigration Legal System for the 21st Century.” The Report, which builds upon the President’s executive action on immigration announced on November 20, 2014, recommends initiatives to modernize the U.S. immigration system to improve its efficiency and accessibility, streamline employment-based immigration processes, and improve access to humanitarian benefits. The Report also addresses specific and important proposed changes to the EB-5 Immigrant Investor visa program.

The EB-5 program is designed to stimulate the U.S. economy through job creation and capital investment. Each year, up to 10,000 immigrant visas, or “green cards”, are available for foreign nationals who invest qualifying capital in commercial enterprises that create or preserve at least 10 jobs for U.S. workers. The foreign national and their eligible family members will initially receive a conditional green card valid for two years. Upon demonstrating that they have met all EB-5 program requirements, the foreign national and their family may apply to have the conditions on their green card removed. Foreign nationals may invest directly or through an approved Regional Center.

President Obama’s recommendations are designed to improve the integrity and impact of the EB-5 program by increasing authority to deny or revoke applications, barring participation by foreign nationals with criminal, fraud, or securities-related violations, and requiring Regional Centers to certify their compliance with federal securities regulations. Specific proposed changes include:

- Requiring conflict-of-interest disclosures by Regional Center principals;
- Enhancing background checks and public disclosure requirements;
- Increasing the minimum qualifying level of investment;
- Streamlining the adjudication and approval of Regional Center applications; and
- Releasing clarified U.S. Department of State guidance to allow foreign nationals to obtain visitor visas to enter the U.S. to examine and/or monitor potential qualifying investments.

These proposed changes are also included in the American Job Creation and Investment Promotion Reform Act introduced by Senators Leahy and Grassley on June 3, 2015. This legislation, if adopted, would reauthorize and reform components of the Regional Center Program, which is currently set to sunset on September 30, 2015. The House of Representatives introduced its own legislation to reauthorize and reform the Regional Center Program in March 2015.

President Obama’s proposed changes along with the pending legislation in Congress, would increase oversight and authority to monitor EB-5 program integrity and improve transparency, introduce additional securities and immigration fraud and national security provisions, and impose additional compliance requirements on Regional Centers and developers. These changes would strengthen the program by reducing instances of fraud and abuse and would modernize the program by providing greater stability to foreign nationals and developers and increasing the pool of

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global capital available to the U.S. economy. However, additional fees to fund the increased oversight could increase the cost of EB-5 capital, and the changes could result in an increase in governmental discretion with a corresponding lack of safeguards against arbitrary decision making.

Miller Canfield's Immigration Team is monitoring developments to the EB-5 Program closely and will be issuing follow up guidance as new information becomes available. We encourage subscription to our Immigration E-Alerts to receive the latest developments on EB-5 and related immigration issues as they progress.