

## *Immigration*

### **Immigrant Investor Program Changes Pushed in Congress as Deadline Looms**

**K**ey lawmakers in both the House and Senate again are ramping up efforts to overhaul the EB-5 immigrant investor program with just over two weeks before its Sept. 30 sunset date.

Echoing a similar push late last year that resulted in a short-term reauthorization without any changes, Sens. Charles Grassley (R-Iowa) and Patrick Leahy (D-Vt.) and Rep. Bob Goodlatte (R-Va.) are trying to get their colleagues to agree to certain new provisions.

Goodlatte, who heads the House Judiciary Committee, had scheduled a Sept. 14 markup of his newly introduced EB-5 overhaul bill (H.R. 5992), but the markup was postponed at the last minute.

The EB-5 program provides green cards to wealthy immigrants—many of whom hail from China—who invest a certain amount in a commercial project that provides jobs for U.S. workers. The regional center part of the program allows immigrants to pool their investments and count indirect job creation toward the visa requirements.

The EB-5 program is permanent; it's the regional center program that needs to be reauthorized periodically by Congress. Regional centers make up about 95 percent of EB-5 investments.

**Fraud Casts Negative Light.** But recent high-profile Securities and Exchange Commission enforcement actions against EB-5 regional centers have cast a negative light on the program.

"Just in the last eight months, one of the biggest EB-5 frauds in the entire program's history came to light with Jay Peak, and that has undoubtedly impacted the way lawmakers are viewing this program," Douglas Hauer, co-chair of Mintz Levin's EB-5 financing practice, told Bloomberg BNA Sept. 13.

Jay Peak is a ski resort in Vermont that had been an EB-5 success story until the SEC sued its owners in April for alleged securities fraud.

Grassley and Leahy—the chairman and ranking member, respectively, of the Senate Judiciary Committee—already have called on fellow lawmakers to overhaul the program or let it expire. Grassley also wrote to Homeland Security Secretary Jeh Johnson Sept. 12 expressing concern about how the program

may be increasing the influence of foreign corporations and governments on the U.S.

The Government Accountability Office also found that U.S. Citizenship and Immigration Services, the DHS agency that manages the EB-5 program, doesn't have overarching fraud detection guidance, Grassley said Sept. 13. The GAO also said fraud detection is "extremely challenging" because of the "voluminous paper files" involved in the application process.

Goodlatte's bill, introduced Sept. 12, was "completely anticipated," and Grassley and Leahy "may be more interested this year in joining with members of the House for some type of bicameral legislation that could address problems in the industry," Hauer said.

But "we're in a period of predictive uncertainty until Sept. 30," he said. "The only thing we can predict is uncertainty."

**Fraud Prevention, Other Changes Proposed.** H.R. 5992 would increase the minimum investment amounts from \$1 million and \$500,000 to \$1.2 million and \$800,000, respectively, according to a bill summary provided to Bloomberg BNA Sept. 13. Investors can pay the lower amount if the project is located in a "targeted investment area"—a rural area or one with high unemployment rates.

The bill also would end what some lawmakers consider TEA gerrymandering, instead setting aside 2,000 EB-5 visas each year for "rural and depressed areas." It also would make certain changes aimed at increasing national security and preventing securities fraud.

In a Sept. 12 letter to Goodlatte and House Judiciary Committee ranking member John Conyers (D-Mich.), a coalition of industry and advocacy groups criticized those provisions that don't relate directly to fraud prevention. Signatories include the U.S. Chamber of Commerce, the American Immigration Lawyers Association, the EB-5 Investment Coalition, Invest in the USA and the Real Estate Roundtable.

"We applaud the Chairman's commitment to reforming the EB-5 economic development program and welcome the opportunity to offer input on these complex and important issues," IIUSA Executive Director Peter Joseph said in a statement provided to Bloomberg BNA Sept. 13. But he said the proposed changes "will take time for stakeholders and lawmakers in the House and the Senate to examine and the shutdown deadline is fast approaching."

"If the program lapses" because lawmakers can't iron out a deal by Sept. 30, "a minimum of \$11 Billion

in community investment and 220,000 local jobs will disappear immediately,” Joseph said.

**Attorney Calls for SEC Management.** “A quick solution to EB-5” that doesn’t allow for thorough hearings and debates “is only going to backfire,” Hauer said.

“But if the solution is to grant more power and resources to USCIS in the process of reforming the program, we won’t see any meaningful change,” he said. That’s because the USCIS “is not equipped to manage the EB-5 program or to administer it,” he said.

In fact, most of the problems in the EB-5 program stem directly from putting its management in the hands of an agency that simply doesn’t have the expertise for it, Hauer said.

Instead of giving more authority to the USCIS to conduct regional center site visits and audits, as is being proposed, Congress needs to put the SEC and state regulatory agencies in charge of vetting regional centers before they’re approved, he said.

“We need to give securities regulators a role here in overseeing the program,” rather than having them pursue enforcement actions after the fact, he said. “Until we have change that addresses who’s overseeing EB-5, we don’t really have a solution even if lawmakers spend the next couple of weeks successfully passing a law,” Hauer said.

Hauer also called for barring individuals who run afoul of the securities laws from the EB-5 program and for requirements that individuals who receive investors’ money follow “strict guidelines” on how to use it.

**USCIS Is Acting.** The USCIS in April asked for feedback on minimum investment amounts, how to designate TEAs, how to designate regional centers and methodologies for measuring indirect job creation.

And during a stakeholder outreach event in late July, Lori MacKenzie, division chief of the Immigrant Investor Program Office, said regulations are in the works, although she declined to provide any details.

IPO Chief Nicholas Colucci said at the same event that the USCIS is hiring more officers to handle EB-5 applications, including auditors of regional centers. Audits will be announced a week in advance, but the agency also is planning unannounced site visits to the business where jobs are supposed to be created, he said.

In the end, time may wind up taking care of at least some of the fraud issues, Hauer said.

EB-5 is still relatively new, and, as with any type of new financing program is “vulnerable to fraud,” he said. “But the longer EB-5 is in the toolkit of finance lawyers, the more normative it will become and we’ll see stronger players looking at EB-5 seriously,” he said.

BY LAURA D. FRANCIS

To contact the reporter on this story: Laura D. Francis in Washington at [lfrancis@bna.com](mailto:lfrancis@bna.com)

To contact the editor responsible for this story: Susan J. McGolrick at [smcgolrick@bna.com](mailto:smcgolrick@bna.com)

---

*Text of Goodlatte’s bill is available at <http://src.bna.com/iwy>.*

To request permission to reuse or share this document, please contact [permissions@bna.com](mailto:permissions@bna.com). In your request, be sure to include the following information: (1) your name, company, mailing address, email and telephone number; (2) name of the document and/or a link to the document PDF; (3) reason for request (what you want to do with the document); and (4) the approximate number of copies to be made or URL address (if posting to a website).