

ROLL CALL

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EB-5 Visa Overhaul Stalls Over Where to Create Jobs

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- Oct. 16, 2015, 5:01 p.m.

A dispute over how to create jobs in rural and high-unemployment areas has delayed a revamp of a popular visa program for foreign investors known as EB-5.

The EB-5 program has been temporarily extended through the continuing resolution that is funding the government through Dec. 11. Lawmakers wanted to overhaul the program, which issued nearly 11,000 visas in fiscal 2014, before a key provision expired on Sept. 30.

While there are several issues lawmakers had to work through — such as what areas should be targeted for funding — Rep. [Darrell Issa](#), R-Calif., said recently new bill language exists and is ready to go as soon as floor time can be found.

“At this point, we have a deal,” Issa told CQ Roll Call about EB-5 overhaul legislation. “When we have a date on the floor, we’ll put it out.”

But lawmakers and staffers have given conflicting reports about the legislative details, and immigration advocacy groups involved in discussions on the Hill say there are still disagreements.

Since 1990, the EB-5 program has offered a path to a green card for foreigners whose investments create 10 jobs. Investors are connected to projects that need funding through regional centers, which now number more than 700 across the country.

The number of visas issued increased from 802 in fiscal 2006 to 10,692 in fiscal 2014, according to the State Department.

More than 85 percent of the EB-5 visas issued in fiscal 2014, the most recent year available, went to investors from China.

Family members of investors are also eligible for EB-5 visas, but they count toward the annual cap of about 10,000. About 65 percent of EB-5 visas went to dependents of investors between fiscal 1992 and 2014, according to a Bipartisan Policy Center report.

Fighting Fraud

Uncertainty about whether foreign funds were obtained lawfully and concerns about nonexistent projects ripping off investors have opened the EB-5 program to a substantial risk of fraud, according to an August report by the Government Accountability Office.

Senate Judiciary Chairman [Charles E. Grassley](#), R-Iowa, has co-authored legislation with ranking Democrat [Patrick J. Leahy](#) of Vermont to add more transparency and oversight to the program.

Under their bill, employees of EB-5 regional centers would need to complete criminal background checks. Foreign investors also would be required to prove the funds they are investing are obtained legally.

The minimum investment would increase from \$500,000 to \$800,000 if the investment is in a high-unemployment or rural area. In other areas, the minimum investment would increase from \$1 million to \$1.2 million.

Other lawmakers have penned legislation aimed at changing various aspects of the program. A bill by GOP presidential candidate and Sen. [Rand Paul](#) of Kentucky would permanently reauthorize regional centers.

In the House, a bill by Rep. [Jared Polis](#), D-Colo., would ensure visas for spouses and children of investors are not counted toward the program's annual cap. Rep. [Zoe Lofgren](#), D-Calif., is behind a bill to provide an additional 10,000 visas if the program reaches its current limit.

Lawmakers said they expect the EB-5 program to be reauthorized with E-Verify, the Internet-based system used by employers to check the legal status of their workers, and two visa programs for doctors and religious workers.

The four programs have been renewed together since the early 1990s, and all were extended through the stopgap spending bill. While the immigration and visa programs could be renewed without changes, Grassley said serious concerns in transparency and national security need to be addressed before they are extended.

Creating Jobs

While transparency is the focus of revamp efforts, the holdup has been how to redefine what areas in the country would qualify as rural or high-unemployment areas, known as targeted employment areas.

State Department data from fiscal 2014 show 98 percent of foreign investors with EB-5 visas fund projects in targeted areas.

But under present law defining the EB-5 visa program, places in New York and Miami that appear to be doing well have been classified as targeted employment areas by combining adjacent census tracts. This tactic benefits urban areas that are already well developed.

As a result, foreign capital is going to luxury apartments, office buildings and four-star hotels in affluent areas, instead of high-unemployment and rural areas, Grassley said.

"Perhaps the greatest violation of congressional intent that has evolved over the years is the manner in which so much of the investment money coming into Targeted Employment Areas has been directed towards lavish building projects in well-to-do urban areas," he said in a floor speech earlier this month.

To give rural areas an edge, the bill by Grassley and Leahy would prohibit combining census tracts. But lawmakers, as well as advocacy groups for investors, said the bill would harm urban areas.

"The existing bills' definition would make it extremely difficult, if [not] impossible, for urban areas to compete," said Greg Chen, director of advocacy for the American Immigration Lawyers Association, which sent a letter to House and Senate leaders last month asking for further discussion on the issue.

Under the bill, a majority of projects would no longer qualify for a minimum investment of \$500,000 because the location of these projects would not be in a targeted employment area, according to an economic analysis conducted by H. Ronald Klasko, an immigration lawyer.

Those in the industry are raising concerns that narrowing how targeted employment areas are defined could lead to a decline in how much foreign funding the program attracts.

"We'd like to see any reform to [targeted employment areas] not upset the balance of capital flow that is coming into the country," said Peter Joseph, executive director of Invest in the USA, a nonprofit trade industry association representing more than 270 regional centers.

Klasko noted that limiting targeted areas to one census tract ignores that a project in a low-unemployment area could provide jobs to workers in nearby high-unemployment areas.

Issa and Polis said they support the idea of taking commuter patterns into account.

"If reasonable people can see that jobs will come from areas of high unemployment to the area of investment, we want to support that," Issa said.

Urban vs. Rural Development

Some groups believe taking commuter patterns into account still heavily benefits projects in urban areas, said Shae Armstrong, a lawyer with More American Jobs Alliance, which advocates for the EB-5 program to create more jobs.

“Those developments are going to happen no matter what,” he said. “But if a project is in a rural area or a truly distressed market, there’s a good chance those deals wouldn’t happen if it were not for EB-5.”

While some foreign investments through EB-5 have gone to rural states such as Idaho and South Dakota, other states such as Maryland, Texas, Illinois and Nevada saw funding primarily concentrated around major cities, according to a 2013 map of EB-5 investments by congressional district from Invest in the USA.

Armstrong said the issue shouldn’t be categorized as rural vs. urban because high-unemployment areas would benefit from tightened standards. Polis said legislation needs to be amenable to lawmakers with large cities in their districts.

“If anyone thinks this program can be turned into a program that strictly invests in rural areas, it’s simply not going to happen,” Polis said. “It needs support from areas from urban and suburban members, too.”