ML STRATEGIES

As Deadline for Expiration Approaches, Congressional Action Likely

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SERVICE AREAS

- Federal Government Relations

Now just days away from the December 11th expiration of a short-term Continuing Resolution (CR) that has been funding federal activities since the start of the current fiscal year on October 1st, Congress is feverishly working to reach agreement on a long-term Omnibus spending bill that will fund the federal government through the remainder of the fiscal year. Included in the CR, which was approved in late September, was a short-term extension of the EB-5 Regional Center Program, which also is set to expire on December 11th.

Supporters of the EB-5 Regional Centers are currently working to achieve a long-term reauthorization of the program. Key contacts on Capitol Hill involved in the negotiations indicate that a reauthorization and comprehensive reform of the EB-5 program discussed below may be included in the Omnibus spending bill that Congress could consider this week. However, another possibility that appears increasingly likely could be a simple, “straight” extension of the EB-5 program – free from any substantive policy changes, with the extension tied to the length of the Omnibus. In that scenario, Congress could work toward negotiating a reauthorization and reform measure with policy changes that could be enacted before the expiration of the straight extension.

By way of background, the EB-5 program offers foreign investors an opportunity to secure permanent U.S. residency by making a minimal capital investment of $1 million per investor that also will create at least 10 new jobs for U.S. workers. For investment in a Targeted Employment Area (TEA), i.e. rural and priority urban investment areas, the minimum investment is $500,000. The Regional Centers are private for-profit or government-affiliated entities that receive special designation from U.S. Citizenship and Immigration Services (USCIS) to administer EB-5 investments and oversee job creation.

Competing legislation to reauthorize and reform the regional center program was introduced in the House of Representatives earlier this year by Representatives Mark Amodei (R-NV) and Jared Polis (D-CO), and Representatives Zoe Lofgren (D-CA) and Luis Gutiérrez (D-IL). In the Senate, Judiciary Committee Chairman Chuck Grassley (R-IA) and Ranking Member Patrick Leahy (D-NH) introduced their own reauthorization and reform measure.

With the earlier bills having failed to move, a new bipartisan, bicameral discussion draft is being circulated. The new proposal would extend the program for five years through September 30, 2019, and also tackle many of the concerns raised by program opponents.

Specifically, the new draft legislation would:

- Increase the minimum investment in rural and high-unemployment areas to $800,000
- Set aside 4,000 of the total 10,000 EB-5 visas available annually for projects in rural and high-unemployment areas (currently that set-aside is 3,000 visas)
- Divide the 4,000 TEA visas equally among investors who invest in rural areas and priority urban investment areas (any unused visas in any given year will remain available within the same category for the following fiscal year)
- Require that investors submit to the Department of Homeland Security a comprehensive business plan, along with a credible economic analysis regarding estimated job creation, any documents filed with the Securities and Exchange Commission under the Securities Act of 1933, any investment and offering documents, a description of the policies and procedures designed to ensure that the regional center and persons engaged with it comply with securities laws and a certification of compliance, and documentation demonstrating that the regional center consulted with a local economic development agency or municipality regarding the capital investment project
- Define a TEA as a rural area, a priority urban investment area, a special investment one, a BRAC facility, or an area consisting of a census tract or contiguous census tracts with an unemployment rate of 150 percent of the national average, a poverty rate of at least 20 percent, and a median family income that is not more than 80 percent of the statewide median family income.

As one might imagine, many aspects related to the Omnibus remain fluid. And as discussed above, given that the discussion draft circulated above has not been vetted by Committee hearings or mark-ups, one possibility remains that the EB-5 program will once again be temporarily extended, giving Congress more time to debate and negotiate potential policy changes to the program.

Mintz Levin and ML Strategies will continue to monitor developments related to a potential EB-5 program reauthorization.

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Alex Hecht is a trusted attorney and policy strategist with over 20 years of experience advising clients across a broad range of industries on how to navigate complex policy environments. His strategic insight and hands-on experience in both legislative and regulatory arenas empower clients to advance their priorities with clarity and confidence in an evolving policy landscape.



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