

EB-5 Proposed Law Changes: Implications for Potential Investor Immigrants to USA



We summarize the proposed changes to the current EB-5 program. Our goal is to help families make informed balanced decisions about their future without being victimized by inaccuracies spread by unscrupulous local broker/agent rumor mills.

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Since 1990, the EB-5 investor immigration program has provided tens of thousands of international applicants a pathway to US citizenship that enables their families to improve their futures as new Americans. While the educational, family and business future prospects of successful families improve, many families have failed in their attempts to secure US citizenship due to a personal lack of preparedness and awareness of the risks involved, as well as misguided advice from unscrupulous agents and brokers in China. The cost of failure is high. Failure to properly prepare for this important process can result in loss of the invested capital, as well as the resident visa, eventual citizenship, and all the “might have been” future opportunities of the family.

It is critical that families seeking to apply for the program are well prepared and understand how

to proactively manage the risks related to the process, so they can take control of their future and successfully evaluate and select a pathway

that meets their own needs. While this planning stage might result in additional advisory expenses, this approach reduces the risk of failure, a risk that can be much more costly and take years to fix, if ever.

The behavior of many immigration brokers creates great risks for families, who often find themselves held hostage to the broker’s profits-first approach that places their commissions above a family’s needs.

An example of this damaging behavior is the current misinformation

campaign waged by many brokers about proposed revisions to the EB-5 program rules. Instead of presenting a balanced and accurate picture of the current actions of the US Congress, many immigration brokers and agents are trumpeting a self-serving message that the EB-5 doors may close soon, or the barriers for

When considering choices that impact the long term best interests of the family, it is important to evaluate the quality and reliability of the information being presented, as well as the source.

Unfortunately, the interests of immigration brokers/agents are not always aligned with those of families.

Immigration brokerage is a “volume business.” Agents and brokers generate profits by maximizing the number of applicants, regardless of whether these applications are successful. This is why fear-mongering is effective for agents and brokers to convince as many families as possible that they should apply immediately, so they can earn a commission immediately.

future EB-5 applicants may become harder to navigate. These brokers and agents are herding panicked families into hasty decisions using fear and ignorance.

POTENTIAL IMPACT OF PROPOSED LEGISLATION

In the section below we share factually correct information about the proposed changes to the EB-5 program, with the goal to let families make informed decisions about their future without falling prey the fear-mongering spread by the local broker/agent rumor mill.

Let us start by debunking three instances of misinformation currently making the rounds in Chinese broker circles and set a proper perspective:

Some immigration brokers and agents profit from a web of conflicts of interest where they earn from the application fee, the professional fees, kick-backs from the referral/introduction fee, and the management fees. In extreme cases, they benefit directly by being undisclosed co-investors with the project owners. Many families blindly ignore the lack of checks and balances and pattern of improper gua-gou structuring.

1. **No laws or regulations on EB-5 have changed.** U.S. Senate Bill S.1501 (“**S.1501**”) suggests several possible changes to the program, however the bill is still being discussed and it has not been approved. Just because the US Congress has a bill proposing a law change, does not mean that the changes will become law. Tens of thousands of law changes are proposed each year and only a small number become law.
2. **EB-5 is not being closed down.** This is an outright lie. We have not seen any reference

to this fact in any US government related sources.

3. **EB-5 is not the only way for Chinese families to obtain US residence with a pathway to citizenship.** In addition to EB-5, there are other programs that also allow for long term residence in the US with the option to obtain citizenship.

Let us look closely at (i) what is actually happening in the US Congress, (ii) what changes are actually being considered, and (iii) whether those changes benefit or hurt potential future investor immigration applicant families. Such a closer look is more helpful to the potential future investor immigrant family. It is not helpful to be part of a stampede of scared and ignorant applicants which only helps brokers increase their head hunting commission collections while sacrificing the family’s future instead of doing proper advanced planning and preparation.

WHAT IS ACTUALLY HAPPENING IN THE US CONGRESS?

S.1501 is indeed considering possible changes to the EB-5 laws which may impact applicants. More importantly, it may impact the entire ecosystem of current professionals and project sponsors. S.1501 focuses on three categories:

- Faster processing times and a streamlined immigration process
- Stricter oversight of investment projects
- More demanding qualifying criteria for investments

WHAT CHANGES ARE ACTUALLY BEING CONSIDERED?

Streamlining

The good news for EB-5 investors is that S. 1501 contains several commonsense measures to decrease the time required to complete the EB-5 process.

Processing Forms

- I-526 form for a temporary EB-5 visa and the I-485 form for conditional permanent residence may be filed and processed concurrently
- Two year conditionality tracks the investment, *not* the investor
- Project pre-approval target time of 4 months, I-526 approval target time of 5 months, and I-829 approval (granting of unconditional permanent residency) target time of 6 months
- 180-day grace period to start a new qualifying investment if existing investment is shut down
- Higher fees to support faster processing times

Oversight

S. 1501 would increase oversight at almost every stage of the EB-5 process, but especially in the areas of approving projects and verifying the legality of funds used. This proposal is an important improvement since currently many Regional Center projects of dubious feasibility/sustainability are approved. Certain brokers and agents tend to partner with the projects that offer the highest commissions without much consideration given to project feasibility or sustainability. To exacerbate the problem, most applicant families rely on broker/agent project suggestions and fail to

undertake any independent due diligence or risk assessment. This can result in the family losing both the funds invested, and their opportunity to achieve citizenship.

We believe potential EB-5 applicants should welcome this increased oversight over project approval.

Some of the specific changes being proposed, which help protect applicant families (and which restricts the current risky behavior of brokers and project owners) are the following:

Project Approval

- Projects must be pre-approved by Citizenship and Immigration Services (USCIS) before other immigration activity can begin
- All principals of projects must pass background checks
- At least one site visit must be made by USCIS to each project site
- Approval standards and potential sanctions will be made clearer
- Preapproval required

Few applicants/families seek professional help to evaluate the safety, professional capacity and sustainability of EB-5 regional center projects. The end result may be that a family loses their hard-earned investment funds along with the opportunity to become citizens because the project failed. That is a disaster for the family especially if they cannot afford a second try. No family should bet their future on a blindly hopeful throw of the dice.

Pre-Approval Requirements

- Business plan
- SEC clearance
- Economic report detailing job creation
- Investment documents
- Detailed compliance procedures and certifications of compliance for all involved
- Marketing materials

Origin of Funds

- Proof of lawful origin of funds required for qualifying investment capital and all funds for paying fees and administrative costs
- Funds cannot be raised through unsupported borrowing
- Funds obtained through a gift are only valid if the giver is an immediate family member or grandparent
- Information on all intermediaries involved in transferring money to the U.S. must be reported to USCIS

Investment Criteria

Since the EB-5 program started exhausting its 10,000 applicant annual quota in 2014, it seemed likely the government would raise eligibility requirements to take advantage of the increased interest. S. 1501 does this.

Eligibility Requirements

- Minimum qualifying investment raised from \$1 million to \$1.2 million for regular direct investments, and from \$500,000 to \$800,000 for Targeted Employment Area (“TEA”) investments
- Jobs created kept at 10, calculations made stricter
- 5,000 visas set aside for TEAs

Targeted Employment Areas

- TEA status now determined by the Department of Homeland Security, not by states (net effect likely to be fewer and smaller TEAs)
- TEAs limited to single census tracts with unemployment at 150% of the national average or higher
- TEA status lasts two years instead of one year

Jobs Created Calculations

- 10% of jobs must be directly created by investment; 90% can be indirectly created
- 50% of jobs must be created in TEA where project is located to be eligible for TEA discount
- Percentage of jobs created by non-EB-5 partners cannot be counted beyond percentage of non-EB-5 capital invested in project, and is capped at 30%

This change may raise the absolute number of jobs created by the project in order to qualify for TEA status. Basically, if an EB-5 investor embarks on a 50-50 project with a domestic partner, the investor would be able to claim only 30% of the jobs created by the domestically provided capital (but still 100% of those created by the other half of the capital).

Smart families hire professional advisors (instead of brokers/agents) to protect their family's future and find safe “right fit” projects rather than spending money on commissions for brokers that add little or no value. These families wish to cross the road safely and sink down roots in their new home country. These are not outcomes that brokers/agents can deliver.

WOULD CHANGES PROPOSED IN S.1501 BENEFIT OR HURT POTENTIAL FUTURE INVESTOR IMMIGRATION APPLICANT FAMILIES?

The changes being proposed are well-thought through. This is NOT the simple-minded narrative being presented to naïve applicant families by brokers trying to cause a stampede before measures are implemented to protect families from unscrupulous immigration brokers and service providers.

Let us be more explicit about the possible pros and cons of the proposed legislation as currently drafted. We realize that if the law passes, there may be other language changes. But let's look closely and not be victimized by the fear or ignorance and those serving interests which do not place applicant families' interests first.

Pros

If implemented, there are several important lessons and possible improvements:

- If the target processing times are achieved, the EB-5 process itself could be as quick as 2 years, 10 months (plus initial planning).
- Immigration professionals will be required to end unscrupulous practices which have been a source of risk and heartbreak for many families. The new procedures will help safeguard the families and the process.
- Better processing guidelines will make it easier to provide clients with consistent results.
- By improving the program, S. 1501 will likely increase EB-5's long-term sustainability, preventing a repeat of Canada's sudden

cancellation of its Investor Immigration Program in 2014 with thousands of outstanding applications.

- Investors should appreciate that EB-5 is a living, changing program and Congress is watching closely and is actively engaged to prevent predatory practices which victimize applicants or which "game the system."

Cons

If implemented, there are several important lessons and possible burdens on applicants.

While investors would have to commit more capital and pay more in fees, they would get a more reliable, faster program and a safer process.

The proposed increased amounts, if adopted, cover the cost of money due to inflation since the levels have remained static for 25 years.

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