

March 11, 2014

## American Entrepreneurship and Investment Act of 2014

Over the last several months, [Brownstein Hyatt Farber Schreck](#) has been working closely with lawmakers on important legislation updating and refining the EB-5 program. Late last week, as a result of these efforts, Rep. Jared Polis (D-CO), in conjunction with Reps. Joe Garcia (D-FL), Matt Salmon (R-AZ) and Mark Amodei (R-NV), introduced the *American Entrepreneurship and Investment Act of 2014*. [This legislation](#) proposes to amend the *Immigrant and Nationality Act* to provide significant reforms to the EB-5 program aimed at increasing efficiency, effectiveness and accountability.

Congress created the EB-5 program more than 20 years ago with the intent to stimulate job creation across the country through direct foreign investment. Every investment made through the EB-5 program must create no less than 10 U.S. jobs for at least 2 years. In the last several years, the use of EB-5 project financing has grown dramatically. A recent industry report notes that since FY2005, EB-5 endeavors have resulted in over \$6.5 billion in capital formation and over 131,000 new U.S. jobs across 35 states. The recent popularity of the program has, in part, led to slower processing times and bureaucratic inefficiencies at U.S. Citizenship and Immigration Services (USCIS), the agency responsible for the administration of the programs. This legislation is intended to address these concerns.

Significant reforms found in the *American Entrepreneurship and Investment Act of 2014* include:

- **Permanent Authorization of EB-5 Program:** The permanent authorization of the EB-5 program provides investors and businesses with certainty and predictability and will help the program grow.
- **Improved Definition of Targeted Employment Area (TEA) Designations:** Codifies the current TEA designation authority, which leaves such designations up to the states. This is consistent with USCIS's May 30, 2013, EB-5 Adjudications Policy (PM-602-0083). It also expands the TEA designation for closed military installations, and areas designated under state or federal economic development incentive programs.
- **Premium Processing of EB-5 Filings:** 60 days premium processing for a fee of \$5,000
- **Project Preapprovals:** Requires the Secretary of Homeland Security to establish a preapproval procedure by which a regional center may have a project business plan preapproved. Further, the bill allows an EB-5 applicant to correct any deficiencies identified by USCIS prior to final determination.
- **Deference to Prior Rulings:** Requires USCIS to defer to its prior rulings, except in the case of material change, fraud, or legal deficiency.
- **New Regional Center Compliance Requirements:** Enhances transparency and accountability within the EB-5 program by requiring investors to comply with certain additional enforceable regulations and laws, including federal securities laws.
- **Direct USCIS Communications with EB-5 Participants:** Provides for increased efficiency in the program by allowing for direct communications between USCIS and regional centers or project developers—who are in the best position to answer questions regarding the petition.
- **“Age Out” Protections:** Protects the child of a principal investor if between the period of conditional permanent residence and removal of conditions, the child “ages out,” and allows that child to still be considered an immediate family member and eligible to be an EB-5 petitioner.

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In addition to its government relations work on EB-5 policy issues, [Brownstein's EB-5 legal team](#) has extensive experience managing EB-5 transactions. Our services include the following:

- Brownstein works with developers to create strategies to bring EB-5 funding into projects, and then continues to work with them to ensure those projects are completed successfully.
- Coordinating all aspects of the EB-5 process, to include working with approved “regional centers,” economists, and specialty immigration counsel as necessary
- Negotiating various aspects of an EB-5 deal between our developer-clients and regional centers, development partners, and often additional creditors
- Drafting critical documents necessary to “paper” an EB-5 project, including offering materials, loan and agency agreements, and corporate filings among other things
- Advocating to ensure our developer-clients have the political support needed to get their EB-5 projects completed

*This document is intended to provide you with general information regarding EB-5. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorney listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.*

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