

## Reprieve for Controversial U.S. Immigration Visa Programme Fails to Ease Investors' Woes



*The site of Kushner Companies' One Journal Square luxury flat project in Jersey City in the northeastern US state of New Jersey. In 2017, the company marketed the project while promoting its connection to US President Donald Trump, leading to US prosecutors' investigation into the company and its tactics. Photo: AFP*

- *Prospects for programme known as EB-5 are grim as a stringent new rule with a higher investment threshold could dry up applications*
- *Rule change also redefines areas designated for funding to avoid abuse and fraud*

The US government extended a controversial US investor visa programme once popular among mainland Chinese, but financial professionals steeped in the programme say it could still face tough times as an overhaul to raise the investment minimum could shut out applicants.

Known as EB-5, the programme grants permanent resident status to foreigners who invest at least US\$500,000 and create at least 10 American jobs in economically struggling parts of the US.

The programme, which was set to expire on Monday, received a temporary extension when US President

Donald Trump signed a "continuing resolution" on Friday that allowed Congress to fund the government and renew the visa programme through November 21.

On that day, when the programme is expected to be extended further, the minimum threshold for the visa applicants would increase under a long-anticipated new rule made final by United States Citizenship and Immigration Services (USCIS).

The new investment amount will increase to US\$900,000 from US\$500,000 and the designation of struggling areas will be redefined. For projects outside high-unemployment areas, the amount will jump to US\$1.8 million from US\$1 million.

Despite the programme's short-term reprieve, industry professionals remain sceptical about its chances for long-term success.

While the new rule aims to address certain long-standing issues, such as the use of the programme's money for projects outside distressed areas, worries abound that the increased threshold will dry up demand for its projects.

"The market is definitely going to shrink," said Mitchell Wexler, an immigration lawyer at Fragomen. While acknowledging the programme needs an overhaul as it "hasn't really matured over time", Wexler said "the near doubling of the minimum amount right out of the gate is catching the market off guard".

The US Congress created EB-5 in 1990 to stimulate the economy through foreign investment. As many as 10,000 visas per year have been issued under the programme.

The change in the investment threshold is the first and most significant change in the programme in the nearly three decades since its inception as the investment minimum has stayed at US\$500,000. The amount will now be adjusted every five years to reflect inflation, according to USCIS.



*Republican Senator Rand Paul of Kentucky wrote his congressional colleagues that rule changes to EB-5 "may undermine the very purpose of the programme, which is to create jobs and grow the economy". Photo: TNS*

"It is a boom and bust time for EB-5," said Stephen Yale-Loehr, an immigration lawyer at Miller Mayer and law professor at Cornell University, pointing to various levels of uncertainty. "I expect a steep drop in filings after November 21, as fewer investors can afford to invest."

The revision will also change how areas of high unemployment, known as targeted employment areas, are defined. The change hits urban neighbourhoods,

where some of the most sought-after investment projects are located, particularly hard.

The new regulation takes away a state's power to decide the designation of high-unemployment areas, giving sole decision-making authority to the Department of Homeland Security, the country's immigration watchdog.

In an effort to keep the stringent regulations at bay, Senator Rand Paul of Kentucky said in a letter to his congressional colleagues last month that "this rule may undermine the very purpose of the programme, which is to create jobs and grow the economy".



*Kushner Companies, a real estate firm owned by the family of US President Donald Trump's son-in-law, Jared Kushner, was criticised in 2017 for invoking Kushner's name during a promotional meeting in China about real estate development in the northeastern US state of New Jersey. Photo: EPA*

The lawmakers are trying to introduce a bill to overturn the amount increases.

But the new regulations are getting bipartisan support and are expected to take effect in November, Wexler said.

The pending changes are spurring a rush of applications before the low-threshold window closes, according to some consultants and industry professionals. But many are postponing such a move, waiting to see what develops from this point.

Applicants from China, a once dominant source of investment that accounted for up to 90 per cent of total investment several years ago, are not jumping in, consultants said.

"Our workload doubled recently with clients coming mostly from India, South Africa and parts of Europe. But we don't see an uptick from China," Wexler said.



*Over nearly three decades, the EB-5 programme has helped finance projects for hotels such as Marriott (above), Hilton, Hyatt and Starwood, among others. Photo: Bloomberg*

One reason is the wait time that has tripled to up to 15 years, hurting the appetite for US investment. Others said the amount increased under the new rule is too small to move the needle for wealthy petitioners in the country.

The EB-5 has gone through 20 extensions amid expectations it would eventually be overhauled someday. Its shortest extension lasted just a week, from April 28 to May 5 in 2017 – an example of how hard it is to try to forecast its longevity.

“Investors are waiting before dipping their toes into the EB-5 waters,” Yale-Loehr said.



*US President Donald Trump's signing of a “continuing resolution” on Friday allowed Congress to fund the government and extend the investor visa programme through November 21. Photo: EPA-EFE*

Over its roughly three decades, the EB-5 programme has helped finance projects for hotels such as Hilton, Hyatt, Marriott and Starwood, among others. In return, tens of thousands of foreign investors have become US green card holders.

Congress hasn't always been friendly to the programme. EB-5 has had a scandal-plagued history that has led to debates among US lawmakers, including whether to end the programme entirely.

The policy, which grants a two-year conditional green card, has been linked to a litany of controversies. Investors' money often goes to luxury real estate projects, rather than distressed areas as Congress intended.

The visa has increasingly been criticised for providing a conduit for money-laundering. Congress has proposed a series of changes in the past year while members of both political parties have threatened to end the programme altogether, unless reforms are made.

In 2017, Kushner Companies, the real estate firm owned by the family of Jared Kushner, Trump's son-in-law and senior adviser, marketed one of its New Jersey projects to a group of Chinese investors while promoting its connection to the president, leading to US prosecutors' investigation into the company and its tactics.

“The programme still carries reputation risks. Therefore, the upcoming overhaul is very much needed,” Wexler said. “But we will have to wait it out until the market digests the new changes.”