

## EB-5 Immigrant Investor Program New Regulations Published & Minimum Investment Increase



26 years after its creation and following discussions since 2015, the Department of Homeland Security (“DHS”) has finally published on 24 July 2019 in the Federal Register, the Final Rule of the EB-5 Immigrant Investor Program Modernization (RIN 1615-1C07) that will be effective on 21 November 2019.

### **SUBSTANSIVE CHANGES**

#### **1. INCREASE OF THE MINIMUM EB-5 INVESTMENT AMOUNTS**

- a. Standard amount will be raised from USD 1 million to USD 1.8 million;
- b. TEA amount will be raised from USD 500,000 to USD 900,000;**
- c. A periodic inflation-adjustment mechanism will be put in place and the minimum investment amounts will be adjusted every 5 years.

It worth mentioning that in order to set these new minimum amounts, DHS compared EB-5 program to other immigration-by-investment streams, such as United Kingdom’s Tier 1 Investor Visa, Australia Significant and Premium Investment Programs, New Zealand’s Investor 1 Resident Visa, as well as the Canadian programs.



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## 2. TEA DESIGNATION

Targeted Employment Area ("TEA") is defined as a rural area or as an area that has experienced at least 150% of the national unemployment average rate.

Under the current regulations, states may designate an area as high unemployment TEA. While recognizing that states possess expertise in local demographics and economics, DHS wishes to set more transparency in TEA designations and avoid inconsistency.

Hence, DHS removes states from the TEA designation process and sets new conditions for the designation. **As a result, some projects may no longer qualify as being deemed located in high unemployment TEAs.**

### SAFE WINDOW

While DHS is giving a 120-day period for the EB-5 market to adjust to the changes, the safe window for EB-5 petitioners is to invest prior to 30 September 2019. In fact, the Immigration and Nationality Act ("INA") in section 103(a) 8 U.S.C. 1103(a) authorizes DHS to make changes to the regulations in force. However, **DHS does not have legal authority to extend the regional center program.**

The Congress will have to extend the program by 1<sup>st</sup> October 2019. If there is no extension by then, the regional center program would stop, and DHS Final Rule would never come into effect. Furthermore, the Congress could pass a new EB-5 legislation setting other conditions to the program. If so, this new law would overrule DHS regulation.

**As of today, any I-526 petition filed before 30 September 2019 will be adjudicated under the current legislation: USD 500,000 to be invested through the regional center program.**

### NEW CHALLENGES

In case DHS Final Rule comes into effect on 21 November 2019, the EB-5 investment would be nearly doubled. Practically speaking, the challenge for EB-5 investors will be to evidence the lawful Source of Funds ("SOF") on a higher amount. As a result, USCIS may have more room to send Request for Evidence or Notice of Intent to Deny in case an officer is of opinion that the SOF requires more supporting documents.

Moving forward in a secured EB-5 project prior to 30 September 2019 remains the safest move for investors.

Should you have further questions about the EB-5 program, or wishes to start the process, please contact your local HLG representative.