

Whether The Senate's EB5 Proposal Will Make The US Investor Immigration Program Less Competitive Relative To Other Countries Investment Immigration Program

Introduction

Investment Visas have become a popular option for governments to attract wealth from overseas, in order to expand their own economies. Each country has their goals in attracting wealth, such as adding liquidity to their market, increasing real estate prices or creating new jobs. The primary goal of the US Investor Immigration program (EB5) is to attract foreign investment so that US jobs are created. In exchange for making the investment, and in some cases creating jobs, the investor and their family are eligible for residency and/or citizenship. Recently, the United States senate has introduced the American Job Creation and Investment Promotion Reform Act of 2015, which would make several significant reforms to the US EB5 program. This article will analyze a couple of the more significant proposals and then compare the current US EB5 program and the Senate proposals to other major investment immigration programs around the world. The primary aim is to analyze whether the changes will impact the US competitiveness relative to other country's investment programs. Specifically, the minimum investment amounts, amount of jobs that need to be created, residency requirements, and processing times will be analyzed. The countries compared and contrasted will include the US, Australia, United Kingdom, Portugal, Hong Kong, and St.Kitts/Nevis.¹

Brief Overview of the US EB5 Investor Immigration Program

In the United States investors can choose from two options; a *passive investment into a Regional Center* (approved by the USCIS) or an *active direct investment*. A direct investment requires the investor be actively involved in the business and 10 direct jobs be created from the invested funds. The Regional Center investment is a passive investment made into a USCIS designated organization that pools funds and invests the funds into a particular economic zone. The regional center investment must create 10 direct or indirect jobs. Both direct investment and regional center investment options require a minimum \$1,000,000 investment or \$500,000 if the investment is in a Targeted Employment Area (TEA). A targeted employment area is an area that, at the time of investment, is a rural area or an area experiencing unemployment of at least 150 percent of the national average rate. Both direct and regional center investments can lead to residency in the US. Practically speaking, most EB5 investments are invested in TEA's so that \$500,000 is required to be invested as opposed to \$1,000,000. Upon approval of the investment project and source of funds, USCIS will grant a 2 year conditional residency. After 2 years when the 10 jobs are created, USCIS will grant permanent residency. After 5 years of residency, the investor may be eligible for US Citizenship. The EB5 program has become so popular, all

¹ The St.Kitts/Nevis program is included as Citizenship enables travel to over 100 countries without a visa while also being considered a tax haven. The Hong Kong investment immigration program was suspended in January 2015. Due to it's past popularity among Chinese investors it has been included for comparison with other countries. It is unknown whether the Hong Kong investment immigration program will resume accepting applications.

10,000 allocated immigration visas annually have been used in fiscal year 2015. Thus, the supply of available EB5 Immigrant Visas has been exceeded by demand. The American Job Creation and Investment Promotion Act of 2015 proposes increasing the investment amounts to \$1,200,000 and \$800,000. The Senate's proposed bill would also make available more immigrant visas by not counting investors family members towards the annual allocation of 10,000.

Comparison of Investor Immigration Programs
Minimum Investment: Passive and Active

Currently, the investment amounts range from \$400,000 in St.Kitts/Nevis to \$500,000 in Portugal, \$500,000/\$1,000,000 in the US, \$1,200,000 in Australia, \$1,290,000 in Hong Kong and approximately \$3,000,000 in the United Kingdom. Australia and the United Kingdom have several options with higher investment amounts, The US Senate's proposed EB5 increase to \$800,000 for targeted employment areas and \$1,200,000 for all other areas still keeps the US competitive relative to other programs. However, in the big scheme of things, raising the investment amount from \$500,000 to \$800,000 will likely impact some investors that either cannot afford to place \$800,000 at risk or are unwilling. The Senate proposed increase should likely follow the economic laws of supply and demand reducing demand for the EB5 program, which will ultimately create less jobs in the US.

Current US EB5 Investment	USD \$500,000 (TEA)/ \$1,000,000 depending on location
Proposed EB5 Investment	USD \$800,000 (TEA)/\$1,200,000
Australia ²	AUD \$1,500,000 (USD \$1,156,050)
United Kingdom ³	GBP \$2,000,000 (USD \$3,067,090)
Portugal ⁴	EU \$500,000 (USD \$560,400)

² For more information about the Australian investment immigration program please see: <http://www.border.gov.au/Trav/Visa-1/188-#> - The Australia program has several levels of investment. There is a provisional visa followed by a permanent visa.

³ For more information on the United Kingdom investment immigration program please see: <https://www.gov.uk/tier-1-investor/overview> - The UK program has several tiers and levels of investment that enable a more efficient path to residency and citizenship

⁴ For information on the Portugal investor immigration program referred to as the Golden Visa please see: http://www.ccpi.pt/pages/portugal-golden-residence-permit_8

Hong Kong ⁵	HKD \$10,000,000 (USD 1,290,000)
St.Kitts and Nevis ⁶	USD\$ 400,000 (For Real Estate Option)

Job Creation

As the chart below shows, the US EB5 program requirement that 10 jobs be created is far in excess of other country investor immigration programs. Only the US requires job creation. There are programs within each country that would permit job creation, however it is not a requirement to obtain residency as it is in the United States EB5 program. The Senate proposal would maintain that 10 jobs be created. However, the proposal would require that 10% of the regional center project jobs created be direct. Moreover, in pooling scenarios with US Citizens and permanent residents, only 30% of the jobs created would be allocated to the immigrant investor. Clearly, the goal of the US investor immigration program is job creation, while other countries prioritize capital investment (added liquidity to their economy). The Senate's proposals related to job creation will likely not impact the competitiveness of the EB5 program.

Current US EB5 Investment	10 direct jobs for direct investment projects and 10 direct and indirect jobs for Regional Center projects
Proposed EB5 Investment	10 direct jobs for direct investment projects and 10 direct and indirect jobs for Regional Center projects. 10% of Regional Center jobs created must be direct job creation. Foreign investors will only receive credit for up to 30% of jobs created when US investors are also investing.
Australia	0
United Kingdom	0
Portugal	0 if a real estate investment

⁵ For more information on the Hong Kong investment immigration program please see:

http://www.immd.gov.hk/eng/services/visas/capital_investment_entrant_scheme.html

⁶ For more information on the St.Kitts and Nevis program please see: <http://ciu.gov.kn/>

Hong Kong	0 if a passive investment
St.Kitts and Nevis	0 if a passive investment

Residency Requirement Prior to or During Investment

As the chart below provides, the US EB5 program does not have any residency requirement prior to making the EB5 investment. However, upon approval of the conditional residency, the investor must live in the US. Extended absences from the US (ie. in excess of a year) could be construed as abandoning the residency status. The Senate proposal does not change the residency requirements. In contrast, Australia requires the Applicant have lived in Australia for 2 out of the last 4 years prior to the application. Each of the other country's do not have residency requirements prior to making the application. Portugal and St.Kitts have minimal residency requirements once residency or citizenship is obtained. The Senate EB5 proposal does not change the residency requirements.

Current US EB5 Investment	1 to 2 years for conditional residency - however, for Chinese Investors there is currently a backlog of approximately 2 years
Proposed EB5 Investment	1 to 2 years, however the proposal to increase investment amounts and eliminate derivatives from the annual visa quota would likely substantially reduce or eliminate the backlog for Chinese Investors
Australia	must have lived in Australia for at least 2 years in the 4 years immediately before the application is made
United Kingdom	0 residency prior to application and obtain the initial visa, after 4 years can apply for permanent residence, after 5 years citizenship
Portugal	Minimum stays in Portugal – 7 days first year & 14 days following periods of 2 years. - Residency Permit granted for an initial period of 1 year & renewed for periods of 2 years.

	- Possibility of permanent residency after year 5 and citizenship one year later
Hong Kong	no residency requirement
St.Kitts and Nevis	no residency requirement

Processing Time of Application

The US and Australia have the longest processing times of approximately 1 to 2 years and approximately 18 months respectively. However, the US processing times do not take into account the backlog in available EB5 visas for Chinese investors, which can add several years to the wait time. The Senate proposal would likely eliminate or substantially reduce the visa backlog by not counting investor dependents towards the 10,000 immigrant visas allocated annually. The increased investment amount could reduce the amount of applications, which may reduce visa processing times. Moreover, having more available immigrant visas (due to not counting family members) will likely reduce visa availability wait times.. More available visas will likely make the Senate proposal more attractive to Chinese investors, who are currently the only ones negatively impacted by the visa backlogs.

Current US EB5 Investment	1 to 2 years on average
Proposed EB5 Investment	No expected changes - 1 to 2 years
Australia	Approximately 18 months
United Kingdom	Application processing times vary based on country of origin and amount of investment. Security checks could increase processing times
Portugal	1 to 2 months
Hong Kong	4 to 6 weeks
St.Kitts and Nevis	4 to 6 months

Conclusion

The Senate's proposal to increase the amount of investment would likely reduce demand for the EB5 program. However, relative to most other developed investment immigration programs,

\$800,000 to \$1,200,000 is certainly competitive. The TEA investment of \$800 would be less than most countries while the \$1,200,000 is right on point with countries such as Australia and Hong Kong. The increase from \$500,000 to \$800,000 would make the EB5 program substantially more expensive than the Portuguese and St.Kitts Investment Immigration programs. The increase of \$300,000 could make Portugal a more desirable choice for those investors on a tight investment budget. Consequently, less demand for the EB5 program will detract from the US goal of investment to create jobs. For those investors that can afford the increase in investment, the Senate's proposal is likely a non-issue. The expected reduction in Immigrant Visa backlogs for Chinese investors would be a huge positive and may attract more Chinese investors wanting to immigrate to the US sooner rather than later. This article only takes into account characteristics of the investment immigration programs. It does not take into account business and personal reasons for wanting to relocate to another country such as tax structure, business opportunities, cleanliness of air, quality of life, among numerous other factors. However, if price is a deciding factor, the Senate proposal's increase in required investment could make the US EB5 program out of reach. Consequently, Portugal, and in some cases, St.Kitts could become more attractive alternatives. While this article is merely a logical guess, only time will tell whether the Senate's EB5 proposal will become enacted into law and the impact on investor demand and ultimately job creation in the United States.