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LOOKING TO AUSTRALIA TO OVERHAUL U.S. FOREIGN INVESTMENT IN REAL ESTATE

INTRODUCTION

Due to numerous new construction and development projects,[1] the U.S. real estate market is hitting a peak for the first time since the 2008 market crash.[2] Yet, it is not U.S. citizens who are benefitting from owning a beautiful New York City apartment in the Time Warner Center overlooking Central Park or a brand new craftsman-style home in the Oregon mountainside.[3] Rather, since 1990, wealthy individual foreign investors have been swallowing up the real estate market, particularly through the use of the 1990 U.S. EB-5 Immigrant Investor Visa program ("EB-5 visa") in the United States.[4] Interestingly,

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1. *See* Dan Barnabic, *Foreign Investors Pose Threat to Residential Real Estate*, MARKETWATCH (June 25, 2015, 11:31 AM), http://www.marketwatch.com/story/foreign-investors-pose-threat-to-residential-real-estate-2015-06-15; Lalaine C. Delmendo, *How Much Longer Can the U.S. Housing Market Grow at this Amazing Rate?*, GLOBAL PROP. GUIDE (July 26, 2016), http://www.globalpropertyguide.com/North-America/United-States/Price-History-Archive/How-much-longer-can-the-US-housing-market-grow-at-this-amazing-rate-127471.

2. The 2008 U.S. market crash and financial crisis created a huge disruption in the housing market and became one of the biggest housing disruptions in U.S. history. *See* Tom DeGrace, *The Housing Market Crash of 2007 and What Caused the Crash*, STOCK PICKS SYS. (Dec. 18, 2011), http://www.stockpickssystem.com/housing-market-crash-2007/; Paul Kosakowski, *The Fall of the Market in the Fall of 2008*, INVESTOPEDIA (May 8, 2017, 2:40 PM), http://www.investopedia.com/articles/economics/09/subprime-market-2008.asp; *Here's how the US Housing Market Has Been Impacted by the 2008 Crash*, BUS. INSIDER (Feb. 11, 2016), http://www.businessinsider.com/impact-of-2008-crash-on-housing-2016-2.

3. *See* Barnabic, *supra* note 1.

4. *See* Andrew Soergel, *China is Buying Its Way into the U.S. Economy*, U.S. NEWS (May 17, 2016), https://www.usnews.com/news/articles/2016-05-17/china-is-buying-its-way-into-the-us-economy; Barnabic, *supra* note 1; Eric Posner, *Citizenship for Sale*, SLATE (May 13, 2015, 10:00 AM), http://www.slate.com/articles/news_and_politics/view_from_chicago/2015/05/eb_5_visa_program_for_immigrant_investors_this_path_to_citizenship_is_a.html; Steve McMillin et al., *Harnessing Private Capital for Job Creation: An Analysis of the EB-5 Program*, EB-5 INV. COALITION, http://eb5coalition.org/resources/analysis-of-the-eb-5-program/ (last visited May 25, 2017); *Immigrant Investor Regional Centers*, U.S. CITIZENSHIP & IMMIGR. SERV.,

wealthy Chinese foreign investors make up the majority of EB-5 visa recipients.[5] Specifically, in 2015, Chinese buyers spent $28.6 billion USD on U.S. real estate, a thirty percent increase from the previous 2013–2014 year.[6] Further, Chinese foreign investment into the United States hit a record $15.7 billion USD in 2015.[7] As a result of an influx in foreign capital in the billions of U.S. dollars, real estate prices in urban centers across the United States have skyrocketed especially since 2008, and regulation and oversight have relaxed, particularly with respect to the U.S. EB-5 visa program, which allows wealthy[8] foreign investors to easily buy property for a certain amount of money and gain immigration, financial, and housing advantages in the United States.[9] Foreign investors participating in the U.S. real estate market are taking advantage of the EB-5 visa program to purchase properties.[10] Wealthy Chinese foreign real estate individuals have, in particular, been purchasing both commercial and residential property in droves, outbidding U.S. buyers with all-cash offers by using the EB-5 visa program.[11] While created with good intent, the EB-5 visa program is often used as a shortcut by wealthy foreign investors in order to gain U.S. resident status, thus allowing the global elite to buy citizenship.[12] In

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https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/immigrant-investor-regional-centers (last visited Dec. 6, 2016); Ron Nixon, *Scrutiny for Visa Program that Aids Foreign Investors*, N.Y. TIMES, Mar. 16, 2016, at A13.

5. *See* Sanjay Bhatt, *Money from Investor Visas Floods U.S., but Doesn't Reach Targeted Poor Areas*, SEATTLE TIMES (Mar. 7, 2015, 8:00 PM), http://www.seattletimes.com/business/real-estate/money-from-investor-visas-floods-us-doesnt-reach-poor-areas-meant-to-benefit/.

6. Ariel Stulberg, *The Real Deal Goes to Shanghai*, REAL DEAL (Sept. 1, 2015), https://therealdeal.com/issues_articles/the-real-deal-goes-to-shanghai/.

7. Soergel, *supra* note 4.

8. For the purposes of this Note, "wealthy" is seen as someone who has hundreds of thousands or millions of dollars worth of money to be able to invest in U.S. property.

9. *See generally* Barnabic, *supra* note 1; Posner, *supra* note 4; McMillin et al., *supra* note 4; *Immigrant Investor Regional Centers*, *supra* note 4.

10. *See* Barnabic, *supra* note 1; Jamil Anderlini, *Surge in Chinese House Buying Spurs Global Backlash*, CNBC (Feb. 25, 2015, 7:16 PM), http://www.cnbc.com/2015/02/25/surge-in-chinese-housebuying-spurs-global-backlash.html.

11. *See* Barnabic, *supra* note 1; Anderlini, *supra* note 10; Nixon, *supra* note 4.

12. *See* Christine Ryan, *Too Porous for Protection? Loopholes in EB-5 Investor Visa Oversight Are Cause for National Security Concern*, 16 SAN DIEGO INT'L

addition, it is well known that the EB-5 visa program has had many problems with corruption, such as fraud and abuse of the EB-5 program due to lack of stringent regulatory oversight.[13] Many specific problems occur within regional centers, which advise foreign investors in purchasing U.S. properties using the EB-5 visa, while there also is a lack of regulation, accountability, and oversight in the EB-5 visa program.[14] The EB-5 visa creates an unfair real-estate marketplace, which is problematic for the United States and its citizens.[15] According to an Asia Society Special Report, Chinese investment in residential property amounted to $93 billion USD between 2010 and 2015, and $17.1 billion USD in commercial property over the same period.[16] As of August 2016, Chinese demand for U.S. property remains strong, as the United States has already drawn $13 billion USD in real estate investment commitments from China.[17] Chinese purchases of properties in the United States, however, has disrupted and created a disproportioned and unbalanced U.S. real

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L.J. 417 (2015); Sophia Yan, *U.S. Runs Out of Investor Visas Again as Chinese Flood Program*, CNN MONEY (Apr. 15, 2015, 4:08 PM), http://money.cnn.com/2015/04/15/news/economy/china-us-visa-eb5-immigrant-investor/; *Immigrant Investor Regional Centers*, *supra* note 4; Nixon, *supra* note 4.

13. *See* Andy Semotiuk, *EB-5 Fraud Highlights Risks of Investor Program*, FORBES (Jan. 5, 2015, 1:50 PM), https://www.forbes.com/sites/andyjsemotiuk/2015/01/05/the-eb-5-investor-program-risks-and-rewards/#399ca27743a5; Nixon, *supra* note 4; Tal Kopan, *Congress Takes Aim at Visa Program that Benefitted Trump's Family Businesses*, CNN (Mar. 9, 2017, 12:21 AM), http://www.cnn.com/2017/03/08/politics/congress-eb5-investor-reform-trump/; Tracy Jan, *Congress Soon Could Make it Harder for Rich People to Move to the U.S.*, WASH. POST (Apr. 27, 2017), https://www.washingtonpost.com/news/wonk/wp/2017/04/27/on-friday-congress-could-make-it-a-lot-harder-for-rich-people-to-move-to-the-u-s/?utm_term=.7c7b30e23d25; Julie Satow, *The Green-Card Carrot*, N.Y. TIMES, May 17, 2015, at RE1.

14. *See* Ann Lee, *Making Visas-for-Dollars Work*, N.Y. TIMES, Apr. 16, 2016, at A19; Semotiuk, *supra* note 13; Nixon, *supra* note 4.

15. *See* Posner, *supra* note 4; Nixon, *supra* note 4.

16. Sara Hsu, *Chinese Investment in U.S. Real Estate Is Going Strong*, FORBES (Oct. 31, 2016, 4:40 PM), https://www.forbes.com/sites/sarahsu/2016/10/31/chinese-investment-in-u-s-real-estate-are-going-strong/#4ade11451e60.

17. *Id.*

estate marketplace.[18] Chinese investors disproportionately purchase expensive properties, as one in fourteen homes are sold for more than $1 million USD to Chinese purchasers in the United States.[19] On average, buyers from China pay $831,800 USD for a home, more than three times as much as U.S. citizens spend comparatively.[20] Chinese foreign buyers also account for almost half of all the property sales to foreign buyers, including Canadian, British, Indian, and Mexican.[21] While at first blush foreign investment may seem to be a great reviver for the stagnant U.S. economy,[22] disproportionate investment in the U.S. housing market by foreign investors can also lead to less affordable housing, particularly for middle-class U.S. citizens.[23] Wealthy Chinese millionaires choose to invest much of their money in properties outside of their country—mostly in the United States, Canada, and Australia, therefore, this problem is not unique.[24]

Australia has faced a similar problem with an influx of foreign real estate investment and took early action in trying to mitigate the problem.[25] In response, Australia implemented wide-sweeping foreign real estate purchasing laws, policies, and regulations beginning in 1975.[26] Australia's Foreign Acquisitions and Takeover Act 1975 (FATA) created the Australian Foreign Investment Review Board (FIRB), a regulatory body that controls and regulates foreign investment in the real estate market and

18. *See* Barnabic, *supra* note 1; Dionne Searcy & Keith Bradsher, *The Great Sprawl*, N.Y. TIMES, Nov. 29, 2015, at BU1; Anderlini, *supra* note 10; Bhatt, *supra* note 5.

19. Searcy & Bradsher, *supra* note 18.

20. *Id.*

21. *See* Dan Barnabic, *The Danger of Foreign Buyers Gobbling Up American Homes*, MARKETWATCH (Oct. 9, 2015, 2:31 PM), http://www.marketwatch.com/story/the-danger-of-foreign-buyers-gobbling-up-american-homes-2015-10-08.

22. *See Id.*

23. *See Id.*; Barnabic, *supra* note 1; Anderlini, *supra* note 10.

24. *See* Barnabic, *supra* note 1; Anderlini, *supra* note 10; Julian Lorkin, *Chinese Buyers Looking for Australian Property 'Bling*,' BBC NEWS (July 2, 2015), www.bbc.com/news/world-australia-33339804.

25. *See* Miranda Maxwell, *Australia is Still Hot Property for Foreign Investors*, AUSTRALIAN (July 22, 2015, 4:34 PM), http://www.theaustralian.com.au/business/business-spectator/australia-is-still-hot-property-for-foreign-investors-/news-story/b7d1ff698efa7f93a3c07b2c2c350532.

26. *See generally About FIRB*, FOREIGN INV. REV. BOARD, http://firb.gov.au/about/ (last visited May 25, 2017).

tracks Australian property purchasers and purchases.[27] The more stringent crackdowns of nefarious foreign investors and stricter approval requirements for foreign investors in property as part of Australia's oversight and laws has helped spur a more Australian-centered housing market.[28] This resulted in a growing Australian economy and ultimately has allowed Australian citizens to participate in a fairer real estate market.[29] In 2015, Australia announced plans to implement additional regulations, on top of the FATA and FIRB, to continue to monitor the real estate market and assist Australians with buying in the same housing market and at a similar advantage as foreign real estate investors.[30]

While Australia was able to solve much of the problem of wealthy foreign direct real estate investors[31] negatively affecting the real estate market, the United States has been unsuccessful in solving similar issues. Wealthy foreign investors are purchasing real estate in the United States, mostly through all-cash offers, through limited liability corporations (LLCs), and various other entity types with anonymity; yet, the investors are barely

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27. *See id.*

28. *See Foreign Investors Face Crackdown on Australian Property Purchases*, GUARDIAN (May 2, 2015, 7:16 PM), https://www.theguardian.com/australia-news/2015/may/03/foreign-investors-face-crackdown-on-australian-property-purchases; Michael Yardney, *Some Facts About Foreign Property Investors in Australia*, SMART COMPANY (Dec. 3, 2015), http://www.smartcompany.com.au/finance/49251-some-facts-about-foreign-property-investors-in-australia/; Ray Clancy, *Australia Clamping Down on Illegal Property Purchases by Foreign Citizens*, AUSTRALIAFORUM (Oct. 4, 2016), http://www.australiaforum.com/information/property/australia-clamping-down-on-illegal-property-purchases-by-foreign-citizens.html.

29. *See* Yardney, *supra* note 28; Clancy, *supra* note 28.

30. *See* Anderlini, *supra* note 10; *Foreign Investors Face Crackdown on Australian Property Purchases*, *supra* note 28; Yardney, *supra* note 28; Clancy, *supra* note 28.

31. According to the International Monetary Fund, foreign direct investment refers to an "investment made to acquire lasting or long-term interest in enterprises operating outside of the economy of the investor." *Foreign Direct Investment*, UNITED NATIONS CONFERENCE ON TRADE & DEV., http://unctad.org/en/Pages/DIAE/Foreign-Direct-Investment-(FDI).aspx (last visited June 7, 2017). The investment is direct because the investor, which could be a foreign person, company, or group of entities, is seeking to control, manage, or have significant influence over the foreign enterprise. *See Id.*

utilizing these properties.[32] While rising U.S. property values benefits the U.S. economy overall, many of the reasons the U.S. market in particular is skyrocketing is due to immigrant investors enjoying regulatory oversight and tax loopholes, and U.S. residency and citizenship shortcuts in U.S. laws, such as through the EB-5 visa program.[33] In addition, many of these rarely used properties are skyrocketing in value in the current market, preventing average, middle-class U.S. citizens from purchasing property in desired locations.[34] As a result, the United States must implement laws, policies, and regulations requiring wealthy foreign real estate investors to go through more stringent regulation, similar to that of Australia's FATA, and create a regulatory board modeled off Australia's FIRB.[35] This would allow the United States to benefit from foreign real estate investment, while simultaneously creating a fair and balanced real estate market where middle-class U.S. citizens can participate.

Part I of this Note will examine the current foreign investment real estate laws and policies in the United States and Australia. Part II will uncover the effects of current U.S. law on foreign real estate investments, specifically that of wealthy Chinese foreign real estate investors who benefit from the United States' EB-5 program, and many immigrants benefitting from relaxed regulatory and oversight policies. Part III will conclude by arguing that the United States must eliminate the EB-5 immigrant investor visa program and use Australia as model for new legislation and policies, such as enacting legislation similar to Australia's FATA and implementing a regulatory board, like the

32. *See* Andrew Rice, *Stash Pad*, N.Y. MAG. (June 29, 2014), http://nymag.com/news/features/foreigners-hiding-money-new-york-real-estate-2014-6/; Danny Abramov, *Negative Impact of Foreign Investments in US Real Estate Markets*, FIN. BUZZ (Feb. 9, 2016), http://www.financialbuzz.com/negative-impact-of-foreign-investments-in-us-real-estate-markets-400606.

33. *See* Rice, *supra* note 32; Abramov, *supra* note 32; Lee, *supra* note 14; Semotiuk, *supra* note 13; Nixon, *supra* note 4; Kopan, *supra* note 13; Jan, *supra* note 13; Satow, *supra* note 13.

34. *See* Rice, *supra* note 32; Hamilton Nolan, *Don't Let Rich People Own Apartments They Don't Live In*, GAWKER (Aug. 14, 2014, 12:00 PM), http://gawker.com/dont-let-rich-people-own-apartments-they-dont-live-in-1621527767; Abramov, *supra* note 32.

35. *See About FIRB*, *supra* note 26.

FIRB, to help create a stricter regulatory scheme that will provide more oversight and control over the foreign real estate investment marketplace in the United States.

I. UNITED STATES AND AUSTRALIAN REAL ESTATE FOREIGN INVESTMENT LAWS AND POLICIES

This Part will examine some current U.S. foreign investment real estate law and policy of the EB-5 visa program.[36] This Part will also highlight how the lack of a regulatory scheme ultimately makes the U.S. real estate market unfair, despite avid U.S. encouragement of foreign real estate investment.[37] This Part will then describe Australia's regulatory board, FIRB, that deals with foreign real estate investment and Australia's recent implementation of additional legislation to help perfect its system of regulating foreign real estate investment.[38]

A. United States of America

Through the Immigration Act of 1990,[39] the United States created EB-5 visas to spur immigration and encourage foreign investment in real estate.[40] The EB-5 visas were introduced as a way to help stimulate the economy and promote job growth in the United States through private equity, while also having new

36. The Patriot Act and federal tax codes are the only other current U.S. federal laws in regard to foreign investment rules. Those laws are beyond the scope of this Note. The Patriot Act mainly focuses on preventing the purchase U.S. property through laundered money. *See USA Patriot Act*, FIN. CRIMES ENFORCEMENT NETWORK, https://www.fincen.gov/resources/statutes-regulations/usa-patriot-act (last visited May 27, 2017). For further information about the U.S. Federal Tax Code in regard to foreign investors in real estate, see generally *FIRPTA Withholding*, INTERNAL REVENUE SERV., https://www.irs.gov/Individuals/International-Taxpayers/FIRPTA-Withholding (last visited May 26, 2017).

37. *See generally* Abramov, *supra* note 32.

38. *See generally About FIRB*, *supra* note 26.

39. Enacted on November 29, 1990, the Immigration Act of 1990 was an amendment to U.S. immigration law that increased the number of legal immigrants that entered into the United States every year. For more information on the Immigration Act of 1990, see Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (1990).

40. *See EB-5 Immigrant Investor Program*, U.S. CITIZENSHIP & IMMIGR. SERV., https://www.uscis.gov/eb-5 (last visited June 7, 2017).

developments grow in less developed neighborhoods.[41] This section will explain why the EB-5 visa program is corrupt and ineffective and disadvantages U.S. citizens. This section will also look at recent proposals by the legislative branch to help adjust the EB-5 visa program.

1. EB-5 Immigrant Investor Visa Program

Generally, under the EB-5 immigrant visa program, an investor can obtain U.S. permanent residency through the EB-5 category if the investor fulfills either of the two requirements.[42] First, an individual must invest $500,000 USD of legally obtained capital in a commercial enterprise[43] within the United States.[44] Through their investment, an investor must also create at least ten jobs for U.S. workers in struggling areas of the United States.[45] Many of these struggling areas of the United States are designated as Targeted Employment Areas (TEAs),[46] and TEA investors are required to create these jobs within certain geographic boundaries.[47] Alternatively, an individual can invest at least $1,000,000 USD in property, which obviates the requirement to create any jobs that benefit struggling areas.[48] After an applicant proves they have met the requirements, the holder of the visa and their immediate family members can

41. *See* McMillin et al., *supra* note 4; *EB-5 Immigrant Investor* Program, *supra* note 40.

42. *See EB-5 Immigrant Investor Program*, *supra* note 40.

43. *See About the EB-5 Visa Classification*, U.S. CITIZENSHIP & IMMIGR. SERV., https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/about-eb-5-visa-classification (last visited June 7, 2017) (defining commercial enterprise as "any for-profit activity formed for the ongoing conduct of lawful business," including partnerships and corporations).

44. *See EB-5 Immigrant Investor Program*, *supra* note 40.

45. *See Id.*

46. *See* American Job Creation and Investment Promotion Reform Act of 2015, S. 1501, 114th Cong. §4(c)(1) (2015) (proposing amendment to 8 U.S.C. § 1153(b)(5)(D)(vi)(II)); *see also* McMillin et al, *supra* note 4.

47. *See* Lee, *supra* note 14; McMillin et al., *supra* note 4; *EB-5 Immigrant Investor Program*, *supra* note 40.

48. *See* Peter Elkind & Marty Jones, *The Dark, Disturbing World of the Visa-for-sale Program*, FORTUNE (July 24, 2014), http://fortune.com/2014/07/24/immigration-eb-5-visa-for-sale/.

begin their paths to citizenship, first through the Greencard program.[49] Upon satisfaction of the EB-5 program requirements, the conditions of residency are removed through a "removal of conditions" (I-829), which allows the investor and their dependents to become lawful permanent residents of the United States without further conditions.[50]

To obtain an EB-5 visa, however, the investor must also prove that their investment is personally owned and is legally obtained.[51] Foreign investors often achieve this goal by funneling their investments through "regional centers," which are private organizations that finance commercial projects.[52] In 1992, U.S. Congress created the "Regional Center Program."[53] In 2013, ninety-eight percent of EB-5 visas were allocated based off investments through regional centers.[54] In September 2015, the U.S. Congress voted to continue the Regional Center Program under the EB-5 program.[55] Today, however, the EB-5 visa is unnecessary, ineffective, and unfair to U.S. citizens and citizens of the world that are not wealthy enough to take advantage of this program, as well the EB-5 visa is not used for the purposes it was intended for in 1990 (such as, making more and better housing available in underdeveloped, poorer areas, while encouraging investment).[56]

2. Possible Reforms in the EB-5 Program Proposed in 2015

In 2015, a few proposals for changes and updates to the EB-5 visa laws were brought before U.S. Congress.[57] It is important to note, however, if passed, these changes and updates to the EB-5

49. *See* Lee, *supra* note 14; Kopan, *supra* note 13; Jan, *supra* note 13; Satow, *supra* note 13; Elkind & Jones, *supra* note 48.

50. *See* McMillin et al., *supra* note 4; Kopan, *supra* note 13; Jan, *supra* note 13; Satow, *supra* note 13; Elkind & Jones, *supra* note 48.

51. *See* McMillin et al., *supra* note 4; Kopan, *supra* note 13; Jan, *supra* note 13; Satow, *supra* note 13; Elkind & Jones, *supra* note 48.

52. Posner, *supra* note 4.

53. *See* McMillin et al., *supra* note 4; *Immigrant Investor Regional Centers*, *supra* note 4.

54. *See* McMillin et al., *supra* note 4.

55. *See Id.*

56. *See* Posner, *supra* note 4; Kopan, *supra* note 13; Jan, *supra* note 13; Satow, *supra* note 13; Elkind & Jones, *supra* note 48.

57. American Entrepreneurship and Investment Act of 2015, H.R. 616, 114th Cong. (2015); American Job Creation and Investment Promotion Reform Act of 2015, S. 1501, 114th Cong. §4(c)(1) (2015).

visa system will not fix the inherent loopholes and unfairness with this program. In the summer of 2016, two reform bills were proposed in U.S. Congress—House Bill 616 ("House Bill")[58] and Senate Bill 1501 ("Senate Bill")[59]—which have not been introduced to or voted on by all the members of U.S. Congress as of the publication date of this Note.[60] Thus far, these two bills have been stuck in committee hearings and have not moved past this stage.[61]

The House Bill proposes to eliminate per-country caps,[62] grant visas to the immediate family members of EB-5 investors without affecting visa quota levels,[63] and permanently authorize the Regional Center Program.[64] Unlike the House Bill, the Senate Bill aims to limit the acceptable means of estimating indirect job creation,[65] require all EB-5 enterprises to employ a certain number of people directly,[66] take away state authority to delimit TEAs,[67] require TEA investors to create jobs within certain boundaries,[68] increase restrictions on sources of EB-5 capital,[69] raise the investment threshold,[70] expand oversight of the regional centers,[71] and reauthorize the Regional Center Program

58. H.R. 616.

59. S. 1501.

60. *See S. 1501 (114th): American Job Creation and Investment Promotion Reform Act of 2015*, GOVTRACK, https://www.govtrack.us/congress/bills/114/s1501 (last visited June 7, 2017); *H.R. 616 – American Entrepreneurship and Investment Act of 2015*, CONGRESS, https://www.congress.gov/bill/114th-congress/house-bill/616 (last visited June 7, 2017).

61. *See S. 1501 (114th): American Job Creation and Investment Promotion Reform Act of 2015*, *supra* note 60; *H.R. 616 – American Entrepreneurship and Investment Act of 2015*, *supra* note 60.

62. American Entrepreneurship and Investment Act of 2015, H.R. 616, 114th Cong. § 4(a) (2015) (proposing amendment to 8 U.S.C. § 1152(a)(2)).

63. *Id.* § 3(a) (proposing amendment to 8 U.S.C. § 1151(b)(1)(P)).

64. *Id.* § 2(a)(3) (proposing amendment *to* 8 U.S.C. § 1153(b)(5)(E)).

65. American Job Creation and Investment Promotion Reform Act of 2015, S. 1501, 114th Cong. § 2(b) (2015) (proposing amendment to 8 U.S.C. § 1153(b)(5)(E)(v)(III)).

66. *Id.* (proposing amendment to 8 U.S.C. § 1153(b)(5)(E)(iv)).

67. *Id.* § 4(c)(1) (proposing amendment to 8 U.S.C. § 1153(b)(5)(D)(vi)(II)).

68. *Id.* § (2)(b) (proposing amendment to 8 U.S.C. § 1153(b)(5)(F)(i)(VII)).

69. *Id.* § 2(b) (proposing amendment to 8 U.S.C. § 1153(b)(5)(L)(iii), (iv)).

70. *Id.* § 4(b)(1) (proposing amendment to 8 U.S.C. § 1153(b)(5)(C)(i), (ii), (iii)).

71. *Id.* § 2(b) (proposing amendment to 8 U.S.C. § 1153(b)(5)(H)(ii), (E)(vi), (F)(iii), (I), (J)(ii)).

for five years.[72] Both legislative proposals offer provisions designed to expedite the application process,[73] improve compliance with securities and antifraud laws,[74] increase the number of visas obtainable through TEA investment,[75] and bind executive agencies to prior rulings on EB-5 applications.[76] While it is encouraging that the U.S. Congress is looking to change and update the EB-5 visa program, the proposed changes do not solve the problems of closing unfair competition in the real estate marketplace and the lack of scrutiny faced by applicants to the EB-5 visa program. The proposed changes actually do the opposite; they facilitate more EB-5 visa applications and hasten and likely deregulate the application process.

B. Australia

In 1975, Australia implemented wide-sweeping foreign real estate purchasing laws, policies, and regulations.[77] The FATA created the FIRB, which regulates foreign investment in the real

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72. *Id.* (proposing amendment to 8 U.S.C. § 1153(b)(5)(E).

73. Concurrent filing of EB-5 petitions and applications for adjustment of status: H.R. 616 § (3)(e)(2) (proposing amendment to 8 U.S.C. § 1255(n)); S.1501 § (4)(f)(2)) (proposing amendment to 8 U.S.C. § 1255(n)); Premium processing: S.1501 § (2)(b) (proposing amendment to 8 U.S.C. § 1153(b)(5)(F)(v); Fixed processing times: H.R. 616 § 2(a)(5) (proposing amendment to 8 U.S.C. § 1153(b)(5)(F)(i)); Business-plan preapproval: H.R. 616 § 2(a)(3) (proposing amendment to 8 U.S.C. § 1153(b)(5)(E)(iii)(I)); S.1501 § (2)(b) (proposing amendments to 8 U.S.C. §§ 1153(b)(5)(F)(i) and (ii)).

74. H.R. 616 § 2(a)(5) (proposing amendments to 8 U.S.C. §§ 1153(b)(5)(F)(ii)); H.R. 616 § 5 (applying the Foreign Corrupt Practices Act, 15 U.S.C. 78a *et seq*., to any EB-5 petition); S.1501 § (2(b)) (proposing amendments to 8 U.S.C. §§ 1153(b)(5)(I) and (F)(i)(V) and (VI)).

75. H.R. 616 § 2(a)(2)(A) (proposing amendment to 8 U.S.C § 1153(b)(5)(B)(i); S. 1501 § 4(a)(1) (proposing amendment to 8 U.S.C. § 1153(b)(5)(B)(i)).

76. H.R. 616 § 2(a)(3) (proposing amendment to 8 U.S.C. § 1153(b)(5)(E)(iii)(II)) ("[T]he Secretary of Homeland Security shall give deference to, and not revisit, favorable determinations made pertaining to a commercial enterprise during the adjudication of [immigrant investor applications]."); S.1501 § 2(b) (proposing amendment to 8 U.S.C. § 1153(b)(5)(F)(ii) ("The approval of a [business plan for investment in a regional center commercial enterprise] shall be binding for the purposes of the adjudication of subsequent petitions seeking classification . . . by immigrants investing in the same commercial enterprise.").

77. *About FIRB*, *supra* note 26.

estate market in order to keep track of the purchasers of Australian property and purchase price of the property.[78] Because Australia has created and enforced greater restrictions on foreign investment in property, such as a regulatory board and limits on the types of property that foreigners can purchase, foreign investors do not take advantage of the Australian real estate market as much as they do in the United States.[79]

This section will examine current Australian foreign investment real estate laws and policies. While Australia encourages foreign investment in property, like the United States, Australia has established certain restrictions through the FIRB and FATA.[80] In addition, in 2015 and 2016 Australia implemented even more restrictions and regulations on foreign investors in real estate, such as new regulations and legislation, including reform to the FATA, new tax conditions that attach to all foreign investment applications, and changes to regulations with how the FIRB formally reviews certain property sales.[81] These restrictions help regulate and ensure that Australian citizens have the opportunity and potential to buy property at a fair price in their own country. [82]

1. Approval for Foreign Investment by the FIRB

Through the regulations of the FATA and the FIRB, in addition to recent regulations and policies, the Australian government requires all investors, foreign and domestic, to comply with Australia's laws and maintain high standards of conduct at all times.[83] As a way for Australia to maintain its national interests,

78. *Id.*; Gary Best, *Foreign Investment in the Australian Real Estate Market*, WHO'S WHO LEGAL (Oct. 2010), http://whoswholegal.com/news/features/article/28667/foreign-investment-australian-real-estate-market/

79. *About FIRB*, *supra* note 26; Maxwell, *supra* note 25.

80. *About FIRB*, *supra* note 26.

81. *Id.*; *Foreign Investors Face Crackdown on Australian Property Purchases*, *supra* note 28; NORTON ROSE FULBRIGHT, CHANGES TO FOREIGN INVESTMENT REGULATION IN AUSTRALIA (April 2016), http://www.nortonrosefulbright.com/files/changes-to-foreign-investment-regulation-in-australia-april-2016-139174.pdf; Yardney, *supra* note 28; Clancy, *supra* note 28.

82. Yardney, *supra* note 28; NORTON ROSE FULBRIGHT, *supra* note 81.

83. *About FIRB*, *supra* note 26.

foreign investors need to seek approval to purchase new dwellings and vacant land for residential development in Australia.[84] The FATA provides structure for the approval process.[85] Under the FATA, foreign investors are required to notify the FIRB and obtain approval from the Australian Treasury before making an investment in an Australian corporation, business, or plot of land.[86] In addition, the federal government's Foreign Investment Policy provides guidance regarding how the FIRB should administer the FATA, and also requires foreign government investors to notify the FIRB and obtain prior approval before making a direct investment, starting a new business, or acquiring an interest in land in Australia.[87] The Foreign Investment Policy also guides foreign investors by providing an understanding of the government's approach to administering the FATA.[88] Therefore, the federal government provides proper oversight through their indirect guidance in the Foreign Investment Policy, which allows for a check on the power of the FIRB administering the FATA statute.

Under the Foreign Investment Policy in Australia, which is enforced through the FIRB, particular rules apply to foreign investors seeking to purchase residential property.[89] Australia crafted its laws and policies specifically to increase Australia's housing stock while maintaining its national interests and goals of helping Australian citizens purchase housing fairly and easily.[90]

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84. *Id.*; Vivienne Bath, *Foreign Investment, the National Interest and National Security—Foreign Direct Investment in Australia and China*, 34 SYDNEY L. REV. 5 (March 2012).

85. *About FIRB*, *supra* note 26.

86. George Gilligan and Megan Bowman, *Berle v. Capital Markets, The Corporation, and the Asian Century: Governance, Accountability, and the Future of Corporate Law the Fifth Annual Symposium of the Adolf A. Berele, Jr. Center on Corporations, Law & Society: State Capital: Global and Australian Perspectives*, 37 SEATTLE U. L. REV. 597 (Winter 2014); *Foreign Investors-Buying property as a Foreigner or Temporary Resident in Australia*, VISA SOLUTIONS, https://www.australia-migration.com/page/Foreign_Investors_Buying_property_as_a_foreigner_or_Temporary_Resident_in_Australia/178 (last visited May 26, 2017).

87. *About FIRB*, *supra* note 26; Gilligan & Bowman, *supra* note 86; Paul Prindable, *Is Australia's Foreign Investment Law Enforceable?*, 1995 APLJ LEXIS 27 (Nov. 28, 1995); Best, *supra* note 78.

88. *About FIRB*, *supra* note 26; Gilligan & Bowman, *supra* note 86.

89. *About FIRB*, *supra* note 26; *Foreign Investors-Buying property as a Foreigner or Temporary Resident in Australia*, *supra* note 86.

90. *About FIRB*, *supra* note 26.

Generally in Australia, foreign investors cannot purchase established (i.e. second-hand) properties as either homes or investment properties.[91] Two exceptions, however, exist with respect to foreign investors purchasing properties in Australia.[92] First, foreign investors can, with approval, buy established dwellings for redevelopment where this involves Australia's housing stock.[93] This helps Australian citizens to purchase property because the housing market then has many options for purchase due to redevelopment of properties.[94] Second, foreign investors operating substantial businesses in Australia may obtain approval through the FIRB to purchase established dwellings to house their Australian staff.[95] This type of FIRB approval is subject to conditions requiring the sale of the property in various circumstances, including when the dwelling is unused for a certain period of time.[96] Foreign citizens can, however, apply to purchase new dwellings and these proposals are normally approved without conditions.[97] Proposals for the purchase of vacant land will also normally be approved, subject to the construction of a dwelling within a period of 4 years.[98] Because of these balancing policies for foreign investment in real estate in Australia, Australia's foreign investment regime is given a relatively high restrictiveness ranking compared to other Organization for Economic Co-operation and Development countries.[99]

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91. A GUIDE FOR FOREIGN CITIZENS BUYING AUSTRALIAN RESIDENTIAL PROPERTY, EXFIN INT'L PTY LTD (2017), https://exfin.com/files/general_materials/Guide%20to%20Foreign%20Citizens%20Buying%20Australian%20Property%202017_2.pdf [hereinafter EXFIN INT'L]; *About FIRB*, *supra* note 26.

92. EXFIN INT'L, *supra* note 91; *About FIRB*, *supra* note 26.

93. EXFIN INT'L, *supra* note 91; *About FIRB*, *supra* note 26.

94. EXFIN INT'L, *supra* note 91; *About FIRB*, *supra* note 26.

95. EXFIN INT'L, *supra* note 91; *About FIRB*, *supra* note 26.

96. EXFIN INT'L, *supra* note 91; *About FIRB*, *supra* note 26.

97. EXFIN INT'L, *supra* note 91; *About FIRB*, *supra* note 26.

98. EXFIN INT'L, *supra* note 91; *About FIRB*, *supra* note 26.

99. Organization for Economic Co-operation and Development countries use their wealth of information on a broad range of topics to help governments foster prosperity and fight poverty through economic growth and financial stability. *See* List of OECD Member countries—Ratification of the Convention on the OECD, OECD, http://www.oecd.org/about/membersandpartners/list-oecd-member-countries.htm (last visited May 26, 2017).

2. Recent Changes in Australian Real Estate Laws, Policies, and Enforcement Regarding Foreign Investment

Recently, Australia made additional changes to its foreign investment laws and policies to regulate foreign investment in real estate more closely.[100] These changes aim to prevent Australians from being unfairly priced out of competitive city property markets and prevent foreign investors from taking advantage of tax breaks and loopholes.[101] The Australian government has been concerned that foreign real estate investors are driving up housing prices for the local Australian people.[102] In response, in May 2015 the Australian government approved attaching application fees to FIRB approvals, which went into effect December 1, 2015.[103] Foreign buyers are now required to pay a fee of $5,000 AUD for property valued under $1 million AUD, with increments of $10,000 AUD added for every $1 million AUD in value of the property thereafter.[104] The Australian government also imposes an extra three percent stamp duty on foreign buyers.[105] Also, an application fee to the FIRB for review is now determined by the value of real estate investment; the higher the property value, the more expensive the application fee.[106]

Currently, the Australian Taxation Office (ATO) is the main government branch responsible for managing compliance in terms of foreign investments in residential real estate and enforcement provisions.[107] Managing compliance includes adding significantly higher penalties for breaching foreign investment

100. *Foreign Investors Face Crackdown on Australian Property Purchases*, *supra* note 28; NORTON ROSE FULBRIGHT, *supra* note 81; Yardney, *supra* note 28; Clancy, *supra* note 28.

101. *Foreign Investors Face Crackdown on Australian Property Purchases*, *supra* note 28; Yardney, *supra* note 28; Clancy, *supra* note 28.

102. Clancy, *supra* note 28.

103. EXFIN INT'L, *supra* note 91; *About FIRB*, *supra* note 26.

104. Maxwell, *supra* note 25.

105. *Id.*

106. EXFIN INT'L, *supra* note 91.

107. Clancy, *supra* note 28; EXFIN INT'L, *supra* note 91. *Foreign Investors Face Crackdown on Australian Property Purchases*, *supra* note 28; Nikki Robinson, Gary Best, and Kylie de Oliveira, *New foreign investment rules- more details announced*, LEXOLOGY (May 7, 2015), http://www.lexology.com/library/detail.aspx?g=ac2798ad-1f0b-4c17-a37a-0822797396f8.

laws, including the FATA.[108] The penalties formed by the ATO for breaching foreign investment laws include: large fines, selling the property in question, and prison sentences.[109] Furthermore, Australia has imposed a new tax on foreign property buyers after Chinese investment in Australian real estate soared sixty percent in the 2014–2015 year.[110] The vast bulk of individual purchases of real estate in Australia are Chinese nationals, who account for about two-thirds of the total number of FIRB applications across all categories.[111] Lastly, the ATO may also impose a holding land tax for those who leave their property vacant.[112]

This new tax policy resulted from market tension where Australian citizens were priced out of housing, particularly from Chinese buyers, who are one of the biggest groups of foreign investors in Australian property.[113] Australia's new tax proposals follow the introduction of similar, yet even more punitive, taxes implemented in Hong Kong and Singapore, which are aimed primarily at discouraging the flood of Mainland Chinese investors into those markets.[114] For example, Singapore increased its surcharge on foreign buyers from ten percent to fifteen percent last year (although U.S. citizens are exempt under the terms of a bilateral trade treaty). Hong Kong also charges a fifteen percent stamp duty on transactions involving foreign buyers, including

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108. EXFIN INT'L, *supra* note 91; *Foreign Investors Face Crackdown on Australian Property Purchases*, *supra* note 28; Robinson, Best & de Oliveira, *supra* note 107; Clancy, *supra* note 28.

109. Many penalties that have been created by the ATO for foreign investors breaching foreign investment laws in Australia include: "From December 1, foreign residents who unlawfully bought established residential property face tougher criminal penalties of up to $127,500 or three years in prison for individuals and up to $637,500 for companies." Peter Ryan, *Foreign Investment: Almost 200 Cases Under Investigation for Possible Breaches*, ABC NEWS (June 8, 2015, 8:45 PM), http://www.abc.net.au/news/2015-06-09/foreign-property-investment-probe-widens/6530556; Clancy, *supra* note 28.

110. Anderlini, *supra* note 10; NORTON ROSE FULBRIGHT, *supra* note 81.

111. Michael Janda, *Foreign Real Estate Investment Jumps 75pc in a Year, FIRB report reveals*, ABC NEWS (Apr. 11, 2016, 3:59 AM), http://www.abc.net.au/news/2016-04-11/foreign-real-estate-investment-jumps-75pc/7317102.

112. Maxwell, *supra* note 25.

113. Anderlini, *supra* note 10.

114. *Id.*; *Overseas Property Buyers to Pay Fees Before Purchasing Home in Australia*, PROP. HUNTER (Mar. 11, 2015), https://www.propertyhunter.com.my/news.php?id=1444 .

Mainland Chinese.[115] In addition to extra taxes and application fees implemented, stronger civil and criminal penalties have been implemented and created by the ATO for serious offenses of breaking Australian foreign investment in real estate laws and policies.[116]

The Australian proposal resulted from a report that indicated that Australians were being priced out of the housing market, leaving many facing a "lifetime of renting."[117] There had been many reports that Chinese buyers priced Australians out of their own property market, and Chinese investors were being blamed for a fourteen percent property hike in Sydney in 2014.[118] Currently, Chinese buyers are pouring billions into the residential market every year, driving up property prices throughout Australia.[119] According to the FIRB, China is the largest foreign real estate investor in Australia.[120] Australia has some of the most expensive property markets globally.[121] As a result, Australia is making and has made some crucial policy changes to prioritize Australians, regardless of socioeconomic class, with respect to buying property in Australia and to help guarantee Australian citizens access to new housing that is fairly priced. While Australia does not oppose foreign investment in real estate, it is making responsible, reasonable laws and policies aimed at allowing Australia to actually benefit more from foreign investment. Through such laws and policies, less foreign investment laws will be broken, foreign investors will be encouraged to redevelop properties in Australia, and Australian housing prices will be fairer for all prospective purchasers.[122] Foreign Investors

115. *Overseas Property Buyers to Pay Fees Before Purchasing Home in Australia*, *supra* note 114.

116. Many penalties that have been created by the ATO for foreign investors breaching foreign investment laws in Australia include: "From December 1, foreign residents who unlawfully bought established residential property face tougher criminal penalties of up to $127,500 or three years in prison for individuals and up to $637,500 for companies." Ryan, *supra* note 109; Clancy, *supra* note 28; NORTON ROSE FULBRIGHT, *supra* note 81.

117. Lorkin, *supra* note 24; *Overseas Property Buyers to Pay Fees Before Purchasing Home in Australia*, *supra* note 114.

118. *Overseas Property Buyers to Pay Fees Before Purchasing Home in Australia*, *supra* note 114.

119. Lorkin, *supra* note 24.

120. *Id.*

121. *Id.*

122. *Id.*

will have to meticulously consider the likely Australian tax consequences and extra costs of making their real estate investment due to the additional compliance and reporting obligations the tax conditions impose, as well as the potential penalties for noncompliance that have been created.[123]

II. THE CURRENT PROBLEM IN THE UNITED STATES: AN UNEQUAL PLAYING FIELD

According to the Congressional Research Service,[124] foreign direct investment in the United States real estate market amounted to $50 billion USD in 2012.[125] Major urban hubs, like San Francisco, Denver, Dallas, New York City, Washington D.C., and Seattle, have already become too expensive for middle-class U.S. citizens to buy real estate as a result.[126] Particularly, conversions of Chinese currency into U.S. dollars to purchase large real estate properties (often through the EB-5 immigrant visa program) by using anonymous names and all-cash offers devalues U.S. currency, prevents U.S. citizens from knowing the identity of purchasers in their neighborhood, and creates an unbalanced, fraud, corrupt, and unfair marketplace for U.S. purchasers.[127]

A. Nameless Wealthy Foreign Investors Jump Through Legal Loopholes

In 2014, Chinese buyers accounted for nearly a quarter of all foreign purchasers of residential real estate in the United States, spending about $22 billion USD.[128] Wealthy Chinese real estate investors are the largest group of foreign real estate buyers in the United States and contribute immensely to inflation

123. NORTON ROSE FULBRIGHT, *supra* note 81;

124. The Congressional Research Service (CRS) works exclusively for the U.S. Congress, providing policy and legal analysis to committees and members of both the U.S House of Representatives and Senate, regardless of party affiliation. As a legislative branch agency within the Library of Congress, CRS has been a valued and respected resource on Capitol Hill for more than a century. *See Congressional Research Service Careers*, LIB. CONGR., https://www.loc.gov/crsinfo/ (last visited May 26, 2017).

125. Rice, *supra* note 32.

126. *Id.*; Abramov, *supra* note 32.

127. Abramov, *supra* note 32; Kopan, *supra* note 13; Jan, *supra* note 13; Satow, *supra* note 13; Elkind & Jones, *supra* note 48.

128. Anderlini, *supra* note 10.

of real estate prices in the marketplace.[129] This spending is driven by the view of many foreign investors, including the Chinese, that U.S. real estate, particularly in big cities like New York, is a stable asset.[130]

According to the U.S. Census Bureau, domestic buyers spend an average of $345,800 USD on a new single-family home.[131] In comparison, foreign investors spend approximately $831,800 USD for residential property on average.[132] With these numbers foreign investors can been seen to mostly be purchasing more expensive properties in the U.S., which then can possibly hike up the prices of nearby neighborhoods and properties.[133] Wealthy foreign investors who buy U.S. real estate property, however, often leave the property vacant.[134] For example, in many of the luxury buildings in New York City, where foreign investors make up most of the tenants (e.g., the Time Warner Center), only about one-third of the owners live in their apartments at any one time.[135] As a result, through their all-cash purchases, foreign investors both increase the value of residences in the real estate market, pricing out middle-class U.S. citizens who could be living in these vacant spaces. Like many other big real estate developers, Time Warner Center's developer markets the condos to wealthy foreigners.[136] Twenty-six percent of the original sales, for example, were to people from other countries, a proportion that has since grown to more than fifty percent among buyers.[137]

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129. Lucinda Shen, *The Chinese Super-Rich Fare About to Flood the U.S. Real-Estate Market*, BUS. INSIDER (Aug. 29, 2015), http://www.businessinsider.com/the-chinese-super-rich-are-about-to-flood-the-us-real-estate-market-2015-8.

130. Konrad Putzier, *How China's Stock Chaos Could Affect New York Real Estate*, REAL DEAL (July 10, 2015, 6:00 PM), https://therealdeal.com/2015/07/10/how-chinas-stock-chaos-could-affect-new-york-real-estate/; Shen, *supra* note 129.

131. Shen, *supra* note 129.

132. Searcy & Bradsher, *supra* note 18; Shen, *supra* note 129.

133. Searcy & Bradsher, *supra* note 18; Shen, *supra* note 129.

134. Louise Story and Stephanie Saul, *Stream of Foreign Wealth Flows to Elite New York Real Estate*, N.Y. TIMES Feb. 7, 2015, at A1.

135. *Id.*

136. *Id.*

137. *Id.*

Many of these foreign investors, however, buy real estate in the United States under secret guises,[138] often through the establishment of an LLC, which allows for the use of anonymous names.[139] In addition, on many deeds, the line for the buyer's signature is often left blank, is illegible, or is signed by a lawyer or another buyer representative.[140] Further, since 2008, roughly thirty percent of condo sales in large-scale Manhattan developments have been to purchasers who either listed an overseas address or bought through an entity like a LLC corporation, a tactic favored by foreign investors but rarely employed by domestic homebuyers.[141] Real estate agents on the Time Warner deal, for example, say that the only vetting process of foreign buyers is determining whether they can purchase the property.[142] Furthermore, "those on the New York end of the transaction often don't know—or don't care to find out—the exact derivation of foreign money involved in these transactions."[143] That said, it is important and necessary to scrutinize entities that invest and enter the United States financially and physically as potential residents. Often, condo boards are unaware of the foreign individuals behind the LLC or other liability-shielding organization.[144] Without knowing exactly who is purchasing luxury condos and residences in the United States, there can be dangerous implications, such as terrorist attacks or corrupt government officials of other countries buying property or flooding the economy with money from dangerous or controversial sources.[145] Beyond that, however, it is imperative for the United States to have fair laws surrounding how foreign investors and their families purchase property, obtain residency, and gain citizenship. It is also important to note that the lack of regulatory oversight, particularly in the EB-5 program, leads to ineffective policies that ultimately affect middle-class U.S. citizens.

Seamus McMahon, a former Time Warner owner and former board member, said that, while he was on the building's board

138. *Id.*
139. *Id.*
140. Story & Saul, *supra* note 134.
141. Rice, *supra* note 32.
142. Story & Saul, *supra* note 134.
143. Rice, *supra* note 32.
144. Story & Saul, *supra* note 134.
145. *Id.*

in 2006, he was unaware that several units were sold to members of the Saudi royal family, including a unit connected to Princess Haifa bint Faisal, the daughter of a former Saudi king, and her husband, Prince Bandar bin Sultan, the former ambassador to the United States.[146] Before her purchase in 2006, Princess Haifa was investigated due to reports that she may have financed a person who aided the September 11th hijackers.[147] Additionally, in 2004, Pablo Ardila, a former provincial governor in Colombia, who was known for hunting trophies and extreme spending, admitted that he and his parents set up a company to buy a $4 million USD condo in the same Time Warner building.[148] Three years later, while in office, Ardila was arrested and immediately jailed by local officials for illegal enrichment.[149] An extensive Colombian government analysis of Ardila's holdings filed in the Colombian court, however, failed to find the Time Warner condo.[150]

Having public information regarding investments, such as who is purchasing property and how it affects the U.S. real estate market, is fair to U.S. citizens and homebuyers.[151] United States citizens and homebuyers should know who is buying property around them and potentially increasing prices in the real estate marketplace and have the right to know if money is coming from terrorist organizations that threaten national security. While the scope of this Note focuses primarily on property, real estate, and the economics of foreign investors buying property in the United States, it is also important to consider the national security implications with the current real estate investor loopholes, laws, and policies.[152]

Anonymity of foreign investors is also ensured through the U.S. financial system. For example, banks in the United States are not required to know the parties behind foreign investments in real estate transactions. Federal banking guidelines and the Federal Financial Institutions Examination Council assert, however, that "banks should take all reasonable steps to ensure

146. *Id.*

147. *9/11-Attacks*, HIST. CHANNEL, http://www.history.com/topics/9-11-attacks (last visited Feb. 19, 2017); Story & Saul, *supra* note 134.

148. Story & Saul, *supra* note 134.

149. *Id.*

150. *Id.*

151. *Id.*

152. Nixon, *supra* note 4.

that they do not knowingly or unwittingly assist in hiding or moving the proceeds of corruption."[153] This requires screening customers to determine whether they are "politically exposed people," such as foreign officials and their relatives and associates, and filing a "suspicious activity report" if the customers transfer unusually large amounts of money.[154] Yet, the United States protects identities in other respects, such as LLCs and other corporate entities purchasing property, which can be incorporated in various states without revealing the identity of their owners.[155] These LLCs and other similar entities get around the federal banking guidelines because, when they move money though bank accounts, banks are not required to know the individuals behind the real estate transaction.[156]

If a U.S. citizen seeks to buy or rent a property domestically, however, he or she must undergo a scrutiny process in order to obtain property.[157] This process (normally through a credit report or a bank account report) is undergone for all domestic purchasers, including a tenant seeking approval by an owner or a board, a buyer or tenant seeking approval of a co-op board, or a buyer purchasing property from a seller, among others. The U.S. Treasury Department, however, does not impose this requirement on foreign investors in real estate, as there is no federal law or policy that enforces that type of process.[158] In the case of the wealthy foreign buyer, there is no true scrutiny process.

B. Wealthy Chinese Investors Take Advantage of Loopholes and Anonymous Entities Available in the EB-5 Immigrant Investor Visa Program

In both residential and commercial real estate, Chinese investors are now the biggest foreign buyers of property in the United

153. Story & Saul, *supra* note 134.
154. *Id.*
155. Rice, *supra* note 32; Story & Saul, *supra* note 134.
156. Rice, *supra* note 32; Story & Saul, *supra* note 134.
157. Rice, *supra* note 32; Story & Saul, *supra* note 134.
158. Story & Saul, *supra* note 134.

States.[159] These Chinese buyers tend to be state-owned enterprises and high-net-worth investors.[160] After 2010, the Chinese began heavily investing in foreign real estate.[161] One estimate suggests that outbound investment from China into foreign real estate was about $3 billion USD in 2010 and more than $16 billion USD in 2013, an over 500 percent increase during that span.[162] Similarly, the National Association of Realtors in the United States asserts that Chinese real estate buyers spent $22 billion USD buying houses in the United States between April 2013 and March 2014.[163]

While created to spur economic growth and immigration, the EB-5 visa program is often used as a loophole by wealthy foreign investors in order to gain U.S. resident status, thus allowing the global elite to buy citizenship.[164] Problems within the EB-5 program and regional centers are the source of these issues,[165] and over the years, the EB-5 visa program has had many problems with corruption.[166] For example, regional centers and brokers downplay risky investments and misrepresent how the program works.[167] Also, the regional centers and brokers often promise that the federal government will guarantee EB-5 investments—when the government actually does not guarantee them.[168] The purpose of the EB-5 visa program is to promote job creation and,

159. Robert T. O'Brien and Surabhi Kejriwal, *Chinese Investment in U.S. Real Estate: Collaborate and Benefit*, DELOITTE CENTER FIN. SERV., available at https://www2.deloitte.com/content/dam/Deloitte/us/Documents/financial-services/us-fsi-tax-chinese-investment-in-us-real-estate-051614.pdf; Diana Olick, *Will Chinese Buyers Flee or Flood U.S. Housing?*, CNBC (July 9, 2015, 11:12 AM), http://www.cnbc.com/2015/07/09/will-chinese-buyers-flee-or-flood-us-housing.html; Anderlini, *supra* note 10.

160. O'Brien & Kejriwal, *supra* note 161; Anderlini, *supra* note 10.

161. JUNJIAN CAO, THE CHINESE REAL ESTATE MARKET: DEVELOPMENT, REGULATION AND INVESTMENT 286–89 (2015).

162. *Id.* at 287.

163. *Id.* at 287.

164. Nixon, supra note 4; Jackie Wattles and Serenitie Wang, *Kushner Family in Beijing: 'Invest $500,000 and Immigrate; to U.S.'*, CNN MONEY (May 7, 2017, 7:36 PM), http://money.cnn.com/2017/05/06/news/jared-kushner-nicole-family-event/.

165. Lee, *supra* note 14; Semotiuk, *supra* note 14; Nixon, *supra* note 4.

166. Nixon, *supra* note 4.

167. Lee, *supra* note 14; Semotiuk, *supra* note 14.

168. Lee, *supra* note 14.

when successful, does not lead to controversy.[169] Many investments, however, have failed to create the required ten jobs and have even gone bankrupt, leaving the investor without his or her money or green card.[170] Additionally, a disturbing number of foreign investors have directed investment money to risky projects or companies that pay little to no return on the investments, which are overseen by brokers, who get a commission regardless of the success of the investment.[171]

Aside from accusations of outright fraud against investors, government administrators lack clear understanding on how to manage an investment program.[172] As a result of inexperience, government administrators often approve businesses that are simple to understand but possess business models that do not generate enough profit to hire workers and reject more sophisticated businesses that show greater potential in generating profits and jobs.[173] Failing to promote the original purposes of the EB-5 visa, the program is now simply a tool for wealthy immigrants to gain citizenship.[174]

The EB-5 program is also difficult to monitor and remains highly unregulated.[175] In February 2014 the Brookings-Rockefeller Project on State and Metropolitan Innovation,[176] an organization that facilitates the development of state economic development strategies centered on advanced industries, workforce, and other economic fundamentals, found that "knowledge of the program's true economic impact is elusive at best."[177] There are two reasons why the "true economic impact"[178] is unknown.[179]

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169. *Id.*; Semotiuk, *supra* note 14.

170. Lee, *supra* note 14.

171. *Id.*

172. *Id.*; Semotiuk, *supra* note 14; Nixon, *supra* note 4.

173. Lee, *supra* note 14.

174. Kopan, *supra* note 13; Jan, *supra* note 13; Satow, *supra* note 13; Elkind & Jones, *supra* note 48.

175. Posner, *supra* note 4; Elkind & Jones, *supra* note 48; Satow, *supra* note 13.

176. Created in 1916, the Brookings Institution is the first private organization devoted to fact-based study of national public policy issues.

177. Audrey Singer and Camille Galdes, *Improving the EB-5 Investor Visa Program: International Financing for U.S. Regional Economic Development*, BROOKINGS-ROCKEFELLER PROJECT ON STATE AND METROPOLITAN INNOVATION (Feb. 2014), http://www.brookings.edu /~/media/research/files/reports/2014/02/05%20eb5/eb5_report.pdf.

178. *Id.*

179. *Id.*

First, the U.S. government is exceedingly generous in its employment tally, giving EB-5 investors credit for all the jobs theoretically spawned by a project, even where EB-5 money represents only a tiny portion of a project's financing.[180] Second, for many mainstream ventures, EB-5 money is not in fact creating jobs.[181]

Gary Becker, the late University of Chicago economist and Nobel laureate, proposed that the United States should sell citizenship to foreigners for a flat fee.[182] The EB-5 program approximates Becker's proposal, albeit in the most inefficient way possible.[183] Becker reasoned that citizenship is a scarce good and, as a result, is subject to the law of supply and demand.[184] He further argues that the United States would attract immigrants skilled enough to earn wages and pay the visa fee, and, ultimately, the United States would gain from the income tax on their wages once they begin working domestically.[185] Additionally, Becker argues that immigrants who can afford the visa fee will be the least likely to burden the public because they are unlikely to utilize the welfare system.[186] Becker's proposal would, in theory, generate cash for the U.S. Treasury more effectively than randomly scattered, poorly thought-out investments across the country.[187] While Becker's proposal is creative and intellectually valid, the solution to the EB-5 visa problem should go further in solving the various EB-5 visa issues and setbacks.[188] Instead, a stronger solution would include forming a regulatory board and eliminating loopholes inherent in EB-5 visa system. If the EB-5 visa program worked as intended when implemented in the 1990s, then middle-class U.S. citizens would have more jobs due to the TEA provision.[189] The EB-5 visa program, however, allows for immigrant investors to broadly purchase property as long as they have a certain amount of money ($1 million

180. *Id.*; Satow, *supra* note 13.
181. Singer & Galdes, *supra* note 177.
182. Posner, *supra* note 4.
183. *Id.*
184. *Id.*
185. *Id.*
186. *Id.*
187. *Id.*
188. *Id.*
189. Lee, *supra* note 14; EB-5 Investment Coalition, *supra* note 4; U.S. Citizenship and Immigration Services, http://www.uscis.gov; Kopan, *supra* note 13; Jan, *supra* note 13.

USD, usually a small piece of an investor's overall net worth) and, as a result, these investors simply purchase properties throughout the United States and inflate the real estate market with little oversight or regulation.[190]

Wealthy Chinese foreign investors are interested in U.S. real estate investments and are able to take advantage of the EB-5 program by buying luxury property through LLCs, paying in full with cash, and purchasing various entities anonymously.[191] In 2015, the EB-5 visa program reached its quota earlier than any other year, which statistically also showed a leap in wealthy Chinese investors taking advantage of the program.[192] In 2014, Chinese nationals accounted for ninety percent of EB-5 visas issued, compared to just thirteen percent in 2004.[193]

In addition, the EB-5 program has resulted in wealthy Chinese investors hurting U.S. neighborhoods.[194] Chinese investors have not been using the EB-5 program as it was intended (i.e., to create jobs and spur economic growth).[195] Instead, these investors are buying apartments but leaving them vacant, or buying property as a one-time investment to be able to send their children to school in the United States or gain residency to the U.S..[196]

In 2014, even the United States' neighbor, Canada, ended its program, the Immigrant Investor Program ("Canadian Immigrant Investor Program"), which was similar to the EB-5 program.[197] The Canadian government wanted to implement poli-

190. Posner, *supra* note 4; Anderlini, *supra* note 10; Nixon, *supra* note 4.

191. Anderlini, *supra* note 10; Nixon, *supra* note 4.

192. Anderlini, *supra* note 10; Yan, *supra* note 12.

193. Yan, *supra* note 12.

194. Bhatt, *supra* note 5.

195. *See* Annie Anjung Lin, *Splitting the EB-5 Program: A Proposal for Employment-Based Immigration Reform to Better Target Immigrant Entrepreneurs and Investors*, 18 CHAP. L. REV. 527 (2015); Nixon, *supra* note 4; Kopan, *supra* note 13; Jan, *supra* note 13.

196. Lin, *supra* note 195; Wattles & Wang, *supra* note 164.

197. *Canada Finally Shuts the Door on Immigrant Investor Visa Program*, WORLD NEWS STAND, http://www.worldnewsstand.net/canada-finally-shuts-door-immigrant-investor-visa-program/ (last visited May 26, 2017); Sophia Yan, *Canada kills investor visa popular with Chinese*, CNN MONEY (Mar. 25, 2014, 2:21 AM), http://money.cnn.com/2014/02/12/news/canada-chinese-immigration/; *New Immigration Rules to Impact Canada's Housing Market*, GLOBAL PROP. GUIDE (Feb. 26, 2014), http://www.globalpropertyguide.com/news-New-immigration-rules-to-impact-Canadas-housing-market-1829.

cies that would cool down expensive property markets, like Vancouver, throughout Canada.[198] In response, in 2013, the Canada Mortgage and Housing Corporation (CMHC) tightened mortgage lending by limiting guarantees it offered to banks and other lending companies in an attempt to control rising housing prices. Under the now retired Canadian Immigrant Investor program, foreign investors with a minimum net worth of $1.6 million CAD ($1.44 million USD) were granted Canadian residency in return for making an interest-free loan of $800,000 CAD ($726,720 USD) to the government for five years. The government returned the principal amount in installments over five years.[199] According to the Canadian government, Canada's Immigrant Investor program significantly undervalued Canadian residency, increased the housing market prices significantly, and mainly received and accepted applications from Chinese investors.[200]

Because regulations and oversight of the EB-5 visa are not as stringent as other countries, middle-class U.S. citizens are missing out on real estate opportunities.[201] In turn, wealthy Chinese real estate investors have increased their investments in U.S. commercial and residential real estate, preventing ordinary U.S. citizens from obtaining real estate at fair and affordable prices, while only benefitting rich developers.[202]

III. SOLUTION: WHY THE UNITED STATES SHOULD BE MORE LIKE AUSTRALIA

While the United States cannot simply adopt Australia's FATA and FIRB as an identical model due to differing economies, population size, and government structures, the United States should take an effective step forward and use Australia as a model.[203] The United States ought to abolish the EB-5 visa program and implement a statute similar to FATA that creates

198. *New Immigration Rules to Impact Canada's Housing Market, supra* note 197.

199. *Id.*

200. *Canada Finally Shuts the Door on Immigrant Investor Visa Program*, *supra* note 197; Yan, *supra* note 197; *New Immigration Rules to Impact Canada's Housing Market, supra* note 197.

201. Barnabic*, supra* note 1; Kopan, *supra* note 13; Jan, *supra* note 13.

202. Kopan, *supra* note 13; Jan, *supra* note 13.

203. *United States v. Australia*, INDEX MUNDI, http://www.indexmundi.com/factbook/compare/united-states.australia (last visited May 26, 2017).

a stringent regulatory board as a new governmental body that works in conjunction with, or as a subagency under, the U.S. Treasury.[204] The statute could be called, "Middle-Class Americans First in Real Estate" (MCAFRE), and MCAFRE would create and guide a regulatory board similar to Australia's FIRB. This new regulatory board would require foreign investors to gain approval from the government, specifically the U.S. Department of Treasury, and meet certain, stringent requirements to purchase property in the United States. The stringent requirements similar to Australia can include: an extra tax on the property foreign investors purchase, application fees to the regulatory board that approves foreign purchase of the properties, a regulatory board formed (which will be further explained below), and no anonymity of individuals or entities when purchasing property in the United States.[205] In addition, similar to Australia, this new board would also issue fines for investors who do not follow the procedures.[206] The U.S. Treasury would monitor the regulatory board and make sure that foreign real estate investors are in compliance with the new stringent and fair processes of foreign investment in real estate. This board would be similar to the FIRB in Australia, where foreign investors in real estate need to get approval from the Australian Treasury before allowing a foreign investor to invest in real estate and who are subject to fines if they do not follow the laws.[207] The FIRB works in conjunction with the Australian Treasury Department and, most recently, the ATO, who ensures compliance, to impose on foreign real estate investors a stringent and fair process when purchasing property in Australia.[208]

This board ought to be comprised of individuals with expertise and background in economics, real estate, and investing. These board members will be nominated by the U.S. Treasury and then voted on and confirmed by the U.S. Congress. The board would

204. *About FIRB*, *supra* note 26; Yardney, *supra* note 28.

205. NORTON ROSE FULBRIGHT, *supra* note 81; *About FIRB*, *supra* note 26.

206. *Foreign Investors Face Crackdown on Australian Property Purchases*, *supra* note 28; Robinson, Best & de Oliveira, *supra* note 107.

207. *Foreign Investors-Buying property as a Foreigner or Temporary Resident in Australia*, *supra* note 86; *About FIRB*, *supra* note 26.

208. *The Legal and Tax Considerations for Chinese HNWIs Investing in Australia Property Market*, HG.ORG, https://www.hg.org/article.asp?id=35834 (last visited May 26, 2017); *About FIRB*, *supra* note 26.

be made up of thirteen members, with one of those members being the chairperson. Thirteen experts on the board provides a more accurate representation of U.S. interests than Australia's six-member board[209] because the United States is more populated and should have representation of many faiths, backgrounds, socioeconomic status, and expertise on the board. Having thirteen members would adequately represent the diversity of the United States and would ensure the regulations and policies enacted would affect all U.S. citizens and noncitizens alike. Like the FIRB in Australia, this board would be in charge of using its expertise to determine what foreign investment in real estate regulations should be put in place and determine the penalties that will be imposed on foreign investors who violate the law or regulation.[210] This board would also advise the U.S. government, particularly the U.S. Treasury, with respect to what property immigrant investors can invest in and which rules, regulations, taxes, and fees require compliance.[211] This further development and proposal of having an additional board that is required by law and confirmed by the U.S. Congress will help further legitimize the requirements for foreign investments and buyers in real estate and reassure the importance of this issue because the interests of U.S. individuals will be accounted for through their representatives.

Additionally, the United States should examine more proposals for regulating foreign investment in real estate. Both the

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209. *About FIRB*, *supra* note 26; United States v. Australia, *supra* note 108.

210. The FIRB in Australia is made up of experts from the real estate and financial sectors. *About FIRB*, *supra* note 26; Best, *supra* note 78.

211. The FIRB in Australia is an advisory board that currently comprises six part-time members and a full-time executive member. The FIRB is responsible for making decisions on the Foreign Investment Policy. The treasury's Foreign Investment and Trade Policy Division provides secretariat services to the FIRB and is responsible for the day-to-day administration of the arrangements. The role of the FIRB, including through its secretariat, is to: examine proposed investments in Australia that are subject to the Foreign Investment Policy, the Foreign Acquisitions and Takeovers Act 1975 ("the Act"), and supporting legislation and to make recommendations to the treasurer and other Treasury portfolio ministers on these proposals; advise the treasurer on the operation of the policy and the Act; foster an awareness and understanding, both in Australia and abroad, of the policy and the Act; provide guidance to foreign persons and their representatives or agents on the policy and the Act; monitor and ensure compliance with the Foreign Investment Policy and the Act; and provide advice to the treasurer on the Foreign Investment Policy and related matters. *About FIRB*, *supra* note 26; Best, *supra* note 78.

United States and Australia have an influx of wealthy foreign investors, particularly from China, in their respective countries and should deal with them similarly to help U.S. and Australian citizens benefit and be able to purchase property at a fair price.[212] Policies and laws have been adopted to help Australians have opportunities to purchase property at a fair price.[213] While Australia has many Chinese real estate investors in the market, the Australian government has formed an effective way to regulate and monitor foreign investment in real estate through the FATA and FIRB.[214] These solutions and ideas will ultimately help ordinary U.S. citizen who want to purchase real estate throughout the United States.[215] The changes the Australian government has made to its foreign investor real estate laws thus far have created a more streamlined process, while increasing compliance costs for foreign investors.[216]

Recently, the U.S. Treasury asserted plans to develop and implement permanent reporting requirements for foreign investments and buyers in real estate.[217] Under the new plan, the U.S. Treasury will identify and track secret buyers of high-end properties.[218] The U.S. Treasury will place stricter scrutiny on, and allocate greater resources to, investigating and regulating luxury real estate sales (many of which are bought by foreign buyers).[219] In addition, the U.S. Treasury will focus on properties paid for in all-cash transactions and property acquired through LLCs or other anonymous entities.[220] Lastly, under the proposal, the U.S. Treasury will require title insurance companies to discover the identities of buyers and will submit the information to

212. Masson de Morfontaine, *The Legal and Tax Considerations for Chinese HNWIs Investing in Australia Property Market*, HG.ORG, https://www.hg.org/article.asp?id=35834; Anderlini, *supra* note 10.

213. Anderlini, *supra* note 10; *Foreign Investors-Buying property as a foreigner or Temporary Resident in Australia*, *supra* note 86; *About FIRB*, *supra* note 26.

214. *The Legal and Tax Considerations for Chinese HNWIs Investing in Australia Property Market*, *supra* note 208; Chinese investment in Australian real estate soared sixty percent in the 2014–2015 year; Anderlini, *supra* note 10; Janda, *supra* note 111; Clancy, *supra* note 28.

215. Clancy, *supra* note 28.

216. Best, *supra* note 78.

217. Louise Story, *U.S. Will Track Secret Buyers of Luxury Real Estate*, N.Y TIMES (Jan. 13, 2016), at A1.

218. *Id.*

219. *Id.*

220. *Id.*

the U.S. Treasury, where the information will be stored in a database for law enforcement.[221]

At the same time, removing the EB-5 program, however, will not deter wealthy foreign investors from purchasing real estate in the United States.[222] Specifically, wealthy Chinese investors in real estate are investing in U.S. property for many reasons in particular, such as China's worsening real estate market, U.S. education and opportunity, diversifying assets, providing a safe haven for money and property, and political barriers that exist in China.[223] Because of personal and economic interests, policy considerations, and opportunities in the United States and Australia by having a more stringent and regulatory scheme for foreign investment in real estate will not deter particularly wealthy Chinese investors from still investing in real estate in both countries.[224] Wealthy Chinese investors in real estate are particularly interested in Australian property for the same reasons and, geographically, China is even closer to Australia than it is the United States.[225] Therefore, even with more restrictive foreign investment real estate regulations, wealthy foreign investors, specifically those from China, will not be deterred from investing in the United States, as can be seen in Australia.[226] Therefore, getting rid of the EB-5 program and having a stringent regulatory board for approval for foreigners to invest in U.S. real estate will not deter wealthy Chinese foreign investors in real estate from buying property in the United States, as new regulatory laws have also not deterred wealthy Chinese or any foreign investors in real estate from buying millions of dollars of property in Australia.[227] This solution in the United States, however, can help to further legitimize, grow, prioritize, and benefit U.S. property buyers and real estate markets.[228]

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221. *Id.*

222. Olick, *supra* note 159; CAO, *supra* note 161; Shen, *supra* note 129.

223. Olick, *supra* note 159; CAO, *supra* note 161; Shen, *supra* note 129; Hsu, *supra* note 16.

224. *Id.*

225. Lorkin, *supra* note 24.

226. Olick, *supra* note 159; CAO, *supra* note 161; Shen, *supra* note 129.

227. Olick, *supra* note 159; CAO, *supra* note 161; Shen, *supra* note 129; EXFIN INT'L, *supra* note 91; *Foreign Investors Face Crackdown on Australian Property Purchases*, *supra* note 28; Robinson, Best & de Oliveira, *supra* note 107.

228. Barnabic, *supra* note 1.

CONCLUSION

The current foreign investment real estate laws and policies in the United States are not working to their fullest potential for U.S. citizens, and the potential harm remains unknown.[229] When large infusions of capital are used by wealthy foreign investors to secure property (particularly residential real estate), over time it will drive the prices of homes out of reach of average, middle-class U.S. citizens.[230] Future generations can be more secure and obtain residential housing more fairly and easily if the U.S. government changes some of the laws and policies associated with foreign investment in real estate.[231] The U.S. Congress should create a foreign investment review board similar to Australia's FIRB to help regulate foreign investment in real estate and recommend to the U.S. Treasury fines to be issued when necessary. The United States should also eliminate the EB-5 program, which helps wealthy foreign citizens bypass immigration laws to obtain citizenship in the United States.[232] Therefore, the United States should closely follow the Australian model for foreign real estate investment in order to help U.S. citizens benefit the most from foreign investment in real estate.[233]

The political environment as of the date of this Note's publication, with the new Trump Administration, the majority Republican Congress, the rebounded economy since the 2008 recession, and uncertainty of world affairs and regime changes marks uncertainty with how the future of the EB-5 program will hold up. It seems at face value the current Trump Administration and family is favorable towards the EB-5 program as it is because President Trump and his family have benefitted from the EB-5 visa program financially in their real estate ventures.[234] However, as of the date of this Note's publication, Congress on both sides of the aisle, Democrat and Republican, have spoken out

229. *Id.*; Posner, *supra* note 4; Anderlini, *supra* note 10.

230. Barnabic, *supra* note 1.

231. *Id.*

232. Posner, *supra* note 4; Elkind & Jones, *supra* note 48.

233. *Foreign Investors Face Crackdown on Australian Property Purchases*, *supra* note 28; Ryan, *supra* note 109; Rebecca Thurlow, *Australia Orders More Foreign Homeowners to Sell*, WALL ST. J. (Aug. 8. 2015, 5:03 AM), https://www.wsj.com/articles/australia-orders-more-foreign-homeowners-to-sell-1439024595; *About FIRB*, *supra* note 26.

234. *See* Jan, *supra* note 13; Wattles & Wang, *supra* note 164; Kopan, *supra* note 13.

about how the EB-5 visa program as it currently stands needs an overhaul of some sort.[235] Though many lawmakers want to make more restrictive standards and regulations for the EB-5 program (such as increasing the $500,000 amount of money needed for an EB-5 to $1.35 million for the minimum level) lawmakers have continued resolutions funding the government for it.[236] Congress passed a spending bill on May 4, 2017 which President Trump signed that extends the EB-5 visa and the EB-5 visa Regional Center Program with no new changes at least until September 30, 2017, which is the end of the fiscal year.[237] All of this raises questions regarding the fate of the EB-5 program, and its continuing viability in the future; even with its faults, unfortunately the EB-5 program seems to continue with the status quo, even though it should not.

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235. *See* Kopan, *supra* note 13; Jan, *supra* note 13.

236. *See* Kopan, *supra* note 13; Jan, *supra* note 13.

237. *See* David Hirson, *President Trump and Congress Extend EB-5 Regional Center Program Through September 30, 2017*, DAVID HIRSON & PARTNERS, LLP (May 9, 2017), http://www.hirsonimmigration.com/president-trump-congress-extend-eb-5-regional-center-program-september-30-2017/; Kristen W. Ng, *EB-5 Program Extended Until Sept. 30, 2017*, EB-5 INSIGHTS (May 8, 2017), http://www.eb5insights.com/2017/05/08/eb-5-program-extended-until-sept-30-2017/.

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