



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION



**July 5, 2016**

## **Letter to Members of Congress from the EB-5 Industry**

Dear Congressional Leaders and Judiciary Chairmen and Ranking Members:

Our organizations are joining together to urge Congress to reauthorize and reform the EB-5 “regional center” investment and job creation program. It is set to expire on September 30, 2016. Congress must not let this important job-creating program lapse, in large measure because of the immediate negative consequences to U.S. businesses and projects counting on EB-5 investment to create jobs for Americans.

EB-5 has generated over \$15 billion over the 10-year period from 2005-2015, has conservatively created over 100,000 U.S. jobs, and has become an essential economic development financing tool in post-Great Recession capital markets that continue to work fundamentally differently today than before 2008. This important job creation program—which is administered at no cost to taxpayers—has helped finance infrastructure, transportation, real estate, community development, schools, elder care, energy, agriculture, manufacturing and other projects. EB-5 projects are prominent parts of the landscape of our nation’s rural, suburban, and urban environments.

To avoid an EB-5 lapse, transparent, bicameral and bipartisan negotiations must occur in earnest. Lawmakers and stakeholders with diverse perspectives should all be involved to build consensus and forge a compromise reform package. We stand ready to assist Congress in the development of a consensus package of effective, fair, and lasting reforms to the program.

Our organizations agree that the following five key issues should be addressed as part of an EB-5 reform bill:

### **1. Program Integrity**

We agree that program integrity and security are paramount. Our organizations support:

- Provisions to prevent and address fraud, including measures designed to be responsive to recent enforcement actions;
- Provisions to protect innocent investors who may be harmed by misconduct by bad actors; and
- Provisions to strengthen national security.

## **2. Targeted Employment Area (TEA) Reform and Investment Minimums**

We recognize that the issue of TEA reform is a challenging one. We also recognize Congress' interest in increasing minimum investment amounts under the program. We support the following principles concerning both TEA policy and minimum investment amounts:

- A TEA designation system that conditions project eligibility on a set of objective, publicly available criteria that will result in TEA eligibility being the exception, not the rule, and a smaller differential between TEA and non-TEA investment amount requirements than the 100% difference today so projects in both categories have the opportunity to compete for EB-5 investors.
- With respect to an increase of minimum investment amounts under the program, and the differential between TEA and non-TEA investments, we encourage Congress to act in a measured way to recalibrate investment minimums that will:
  - Take into consideration maintaining the global competitiveness of the United States' investor visa program in light of required investment minimums under similar programs abroad; and
  - Increase investment minimums in a way that will not shock and disrupt the global investor marketplace to the detriment of the United States' ability to attract foreign investors.

## **3. Visa Availability and USCIS Processing Backlog**

The growing wait time for EB-5 visa availability threatens to undermine the important reforms Congress is considering for the program. With an estimated eight-year wait for an EB-5 visa to be available to the vast majority of investors, increasing visa capacity is a priority. We strongly support any mechanism that will address the current visa availability issue, which poses harm to program effectiveness and viability – especially when considering the global competition among countries to attract foreign investors via immigrant investor programs that come in a wide variety of forms.

In addition to the visa availability issue, there is currently a backlog of over 22,000 investor applications pending with U.S. Citizenship and Immigration Services (“USCIS”) adjudication and which collectively represent over \$11 billion in foreign direct investment. Processing times have increased to an average of almost 18 months for these investors. The lack of predictability in processing times coupled with the average length of processing poses a similar threat to

program viability. The uncertainty simply scares away economic opportunity on both sides of the transaction. We encourage Congress to consider viable ways to address these important issues, which are central to sustaining the program's national positive economic impact.

#### **4. Effective Dates**

We strongly support effective date policies to promote fairness and predictability in the context of new program rules and policies. We support:

- No retroactive application of new program rules to individual investors who, on the date of enactment, have already made their EB-5 capital investment, have I-526 petitions pending or approved, and/or who will file I-829 petitions in the future based on the law as it existed when their I-526 petition was filed. These investors collectively account for tens of billions of EB-5 investment capital currently in the U.S. economy that support over 100,000 U.S. jobs at no cost to the taxpayer; and
- Reasonable implementation of new rules for projects that have filed for approval before enactment to protect U.S. businesses that have proceeded in reliance on current law. For example, as new regulations are promulgated based on reforms, EB-5 projects already pending at USCIS should have at least a six-month window where existing TEA designation, job creation methodology, and other provisions related to project structure remain valid. Other provisions to address fraud and national security concerns, along with minimum investment amounts, can take effect immediately upon enactment. This would minimize disruption to existing economic activity upon which so many Americans rely, while ensuring that reform is implemented in a timely manner.

#### **5. Extension of the Regional Center Program**

We support a permanent extension of the RC program. After more than 20 years in law, and in light of anticipated significant reforms, we believe it is appropriate for Congress to permanently authorize the program. Should Congress decide not to do so at this time, we recommend at a minimum that the reauthorization period should not be short term. Again, under either scenario, we strongly encourage Congress to avoid the severe economic impact to American businesses and investors that a program lapse would cause, disrupting tens of billions of dollars of investments around the country and the U.S. jobs that depend on them.

Our organizations stand ready to assist on any and all of these matters. We submit this letter with appreciation of your efforts. We hope you look to us for assistance to help ensure that any EB-5 reforms will equitably preserve and enhance regional centers' positive economic impact on communities across the nation. Thank you for your consideration.

cc: Members of the Judiciary Committees of the U.S. Senate and House of Representatives