

**House of Representatives Judiciary Committee
The Department of Homeland Security's Proposed
Regulations Reforming
the Investor Visa Program
March 8, 2017**

**Testimony of C. Sam Walls III
President and COO, Arkansas Capital Corporation**

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Chairman Goodlatte, Ranking Member Conyers, and members of the Committee: thank you for the opportunity to appear today to discuss the EB-5 foreign investor program. My name is Sam Walls, and I am the President and COO of the Arkansas Capital Corporation.

Introduction

Arkansas Capital Corporation (ACC) is a private non-profit, economic development company that was formed in 1957 by state business leaders that included the late Governor Winthrop Rockefeller. Our company partners with banks and other private sector sources to provide capital to businesses starting or expanding in Arkansas. We also work with state and local governments to advance economic development goals. Since our inception, small business lending has been a focus of ACC and today we are a state leader in utilizing the federal SBA and USDA loan guarantee programs to benefit small business.

Over the years, ACC and its affiliate companies have promoted venture capital in Arkansas by creating and investing in local venture capital funds, and have also received \$265 million in Federal New Market Tax Credits with over half of that amount going to rural, highly distressed areas. ACC has also encouraged rural broadband adoption and promoted entrepreneurial education in schools from 5th grade through graduate school. In total, ACC has helped to deploy almost \$1.6 billion in capital to Arkansas businesses and to promote entrepreneurship and economic development.

Because of Arkansas Capital Corporation's long history of cooperating with the state and its impeccable reputation, in 2012 state leaders approached ACC and asked that the company consider creating an EB-5 Regional Center that would serve Arkansas as there was not one covering the state at that time. Pine State Regional Center was approved in 2014.

In September of 2015, Pine State filed its first EB-5 exemplar petition to raise up to \$200 million dollars for a \$1.67 billion dollar steel manufacturer to be located in the rural City of Osceola, Arkansas. Osceola is in the northeast corner of Arkansas in Mississippi County. Like many rural counties, Mississippi County has seen better days. It has been designated a Persistent Poverty County and a Distressed County by the Delta Regional Authority. As of the end of 2016, its unemployment rate was 6.9% as compared to 4.7% nationwide and the median household income was \$34,612 vs. \$53,889 nationwide. The

poverty rate is 26.3% vs. 13.5% nationwide and persons with a bachelor's degree or higher is 13.2% vs. 29.8% nationwide.

Big River Steel, so named because of its location next to the Mississippi river, is the newest and most technologically advanced scrap recycling steel production facility in the world. It is the largest industrial project in the history of the state of Arkansas. It is the first steel mill to be invited to become a member of the Center for Collision and Safety Analysis and the first steel mill in the world to be LEED certified. Big River Steel will produce some of the highest quality niche steel products in the world.

As a job creator, local and state leaders have labeled Big River Steel as a “game changer” and a “godsend”. In total, 9,600 construction, direct and indirect jobs at or related to the facility will be created. For this phase one of the facility, Big River Steel has committed to the state of Arkansas that its 435 jobs will pay no less than \$75,000 per year plus benefits. The vast majority of those positions are going to employees who do not have a college degree, and so Big River Steel is spending over \$10 million on training to prepare their workers. There has already been an additional \$300 million in investment from suppliers, customers and service providers in the local area creating an additional 300 jobs related to the mill.

Although we are proud of our involvement in the Big River Steel project, I want to make clear that our support for the reforms contained in USCIS’ proposed regulations, and in legislation advanced by you and Ranking Member Conyers, along with Senators Grassley and Leahy, is not merely because it may provide some benefit to our project. These reforms would help rural and distressed urban communities across the country, and in my view are simply good policy. I describe our project as an example of the type of development, common in rural communities, which could be better supported if the EB-5 program’s incentives worked as Congress intended.

USCIS Proposed Regulations

Before I make some remarks about USCIS’ proposed EB-5 regulations, I wanted to express my thanks to Chairman Goodlatte, Ranking Member Conyers, Chairman Grassley, and Senator Leahy for their collective efforts to enact EB-5 reform legislation. We strongly supported these legislative proposals, introduced in the 114th Congress, and were disappointed that they did not move forward. Despite past challenges, I am hopeful that the Committees will continue to push for EB-5 reforms that will help rural and underserved communities.

I applaud USCIS for its proposed regulations on EB-5. As Chairman Goodlatte and Ranking Member Conyers know better than anyone, reform of the EB-5 program is long overdue. The program is routinely characterized as “controversial.” It has had its share of financial misconduct and the pervasive manipulation of the TEA provision has led many to question whether the program is anything more than cheap capital for real estate development firms. USCIS’ proposed regulations are a step toward getting rid of the adjective “controversial” that often begins any discussion of the program.

Although we share the concern of many in the EB-5 stakeholder community about the rate of the increase to the current required investment levels proposed in the regulation, we welcome the proposed rule for several reasons. First, the rule’s reform of the targeted employment area (TEA) designation process will put an end to the practice of stringing together dozens of disparate census tracts to achieve the required unemployment rate for TEA status—a practice that has been termed “gerrymandering.” As the Committee is well aware, under the current regulations, virtually any area of the country, including some of the most affluent areas, can easily obtain TEA status. This has rendered the incentive meaningless, and corrodes the congressional intent underlying the provision.

The TEA provision’s manipulation has been well documented by both the House and Senate Judiciary Committees in oversight hearings, during testimony by Chairman Goodlatte before the Senate Judiciary Committee, and in recent floor speeches delivered by Senator Leahy and Senator Grassley this past December. The Government Accountability Office has closely examined the Eb-5 program, as have journalists and scholars.

For example, on February 11, 2016, this Committee held a hearing entitled “Is the Visa Investor Program an Underperforming Asset?” The Senate Judiciary Committee held two hearings on the EB-5 program in 2016. First, on February 2, 2016, the Committee held a hearing called “The Failures and Future of the EB-5 Regional Center Program: Can it be Fixed?” And on April 13, 2016, the Committee directly examined the issue of TEA manipulation in a hearing entitled “The Distortion of EB-5 Targeted Employment Areas: Time to End the Abuse.” New York University Stern School of Business professors Gary Friedland and Jeanne Calderon have written a series of articles published at the Center for Real Estate Finance Research, which critically examine the manipulation of the TEA provision. The news media has extensively covered TEA manipulation. Eliot Brown of the *Wall Street Journal* has written several articles focused on the EB-5 program and the TEA provision, including “How a U.S. Visa-for-Cash Plan Funds Luxury Apartment Buildings,” published on September 9, 2015, and more recently, “New York Developer Lobbies Against Changes to Immigrant Investor Program,” which outlined how lobbying efforts prevented reforms during the most recent program reauthorization. And the *New York Times* has written critically about the program, publishing, among others, an article on November 15, 2016 entitled “U.S. Foreign Investor Program Funding More Luxury Projects.” In addition to the lengthy records that this Committee and its counterpart in the Senate have developed to examine the flaws in the program, the phenomenon has not escaped the attention of journalists and scholars.

According to a Government Accountability Office (GAO) report published on September 16, 2016, only three percent of investments made through the EB-5 program go into rural areas. The GAO also found that 90 percent of investors have invested in projects that are in urban TEAs comprised of many, sometimes dozens, of census tracts—meaning that developers had to stitch together many tracts beyond their principal place of business to obtain the required unemployment rate. This is clear evidence that the TEA provision is not serving as Congress intended. In these situations, the TEA discount only serves the

developers, and not the communities Congress had in mind when it enacted the program and the TEA incentive. Mr. Chairman, I agree with your observation that this practice makes a “mockery” of what Congress intended.

We also appreciate that the proposed regulation essentially maintains the current statutory differential between the TEA and non-TEA investment level of approximately \$500,000. From my perspective, this is a key component of TEA reform. If the process for TEA works as it was intended—limited to rural areas and truly distressed urban areas—the discounted investment amount proposed by the regulation will serve as a real incentive for investors to consider investments in these areas. I know that some in the industry are resistant to a meaningful differential, and some have proposed that the discounted rate be reduced to \$50,000. I can tell you that this would amount to the status quo, and would not be sufficient to provide a real incentive for investors. So let’s be honest: those who are opposing reform know as well as I do that a meaningful discount for TEA investments, under a TEA designation process that is more limited, will provide an incentive for which they likely would not be eligible.

The program’s legislative history is very clear: the discounted investment rate was intended to drive investment to areas of the country that are traditionally undercapitalized. The TEA provision’s discount was intended to be a limited exception to the higher investment level. If the EB-5 program’s original legislative intent is restored, either through USCIS’ proposed regulation or legislation, I believe the program has the potential to spur significant economic activity in rural areas of the country as well as distressed and undercapitalized urban areas. The proposed rule takes important steps toward meeting these goals.

The proposed rule is important for another reason. Over the past two years, we have been disappointed to witness a small segment of the EB-5 industry essentially veto proposed reforms. Most recently this past December, these stakeholders rejected a very fair reform compromise, which included a six-year reauthorization. Even though aspects of the December compromise were not as strong as we would have liked, we supported it in the spirit of compromise and for the long-term health and viability of the program. So I am hopeful that the proposed regulations—which go farther than recent legislative proposals—will encourage those who have been blocking your reform efforts to rethink that opposition. In my opinion, without a concrete incentive like these proposed regulations those who have blocked reforms in the past will continue to do so in order to maintain the status quo. I believe it is critically important for these regulations to be finalized after the public comment period is closed.

Arguments Against Reform

I have heard various arguments about why Congress should not change the EB-5 program. Some have argued that the proposed legislative reforms, and the proposed regulations, “pick winners and losers” by incentivizing rural investment and investment in distressed urban areas. But I don’t agree that Congress is picking winners and losers when it promotes economic development in American communities that genuinely need

it. When Congress enacted this law, it very intentionally included a significant incentive for investment in rural and high unemployment urban areas. And through widespread manipulation, this incentive has been effectively written out of the law. Efforts to restore Congress' intent for EB-5 and the TEA incentive do not amount to picking winners and losers; they are efforts to fix a broken program.

I have heard arguments that the EB-5 program is primarily a job creation program, and so it should not matter where investments are going as long as economic activity occurs. But this argument completely ignores the fact that Congress enacted the TEA incentive for a very specific purpose—a purpose that is not being fulfilled under the current regulations. Congress has every right to insist that public policy work as it was intended.

Some have argued that investors will not respond favorably to changes to the program, and that investors are price sensitive and do not want change. From my perspective, domestic policy enacted by the Congress ought to primarily serve the interests of Americans, and if investors decide that they do not want to invest in the United States, they have other options.

Closing

During the recent presidential election, Americans made it clear that they expect Congress to help struggling communities restore vital sources of employment. The new administration has pledged to promote economic activity in communities that have seen jobs disappear. And I suspect many members of this committee have communities in their districts that are in genuine need of economic activity. The policies contained in USCIS' proposed rule, and in legislative proposals offered by the leaders of the House and Senate Judiciary Committees, would realize Congress' original intent for the EB-5 program to spur job creation in the areas of the country that need it most. The reforms contained in USCIS' proposed regulation are a very strong step toward meaningful reform. Thank you, and I look forward to your questions.