

**Reform and Reauthorize the EB-5 Regional Center Program
Before It Expires on September 30**

May 17, 2019

The Honorable Lindsey Graham
Chairman
Committee on the Judiciary
U.S. Senate

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
U.S. Senate

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
U.S. House of Representatives

The Honorable Doug Collins
Ranking Member
Committee on the Judiciary
U.S. House of Representatives

Dear Judiciary Committee Chairmen and Ranking Members:

Our organizations support a uniform set of principles to strengthen and reform the EB-5 Regional Center program before it expires on September 30, 2019. The principles around which we are aligned for a six-year reauthorization are attached to this letter.

A comprehensive suite of long overdue reforms is necessary to sustain EB-5 project capital so it can bring significant economic and job creation benefits to the United States. A [recent report](#) estimates that the regional center program brought a total of \$10.98 billion into the country (accounting for roughly 2% of all foreign direct investment net flows into the U.S.), and created more than 355,000 U.S. jobs (representing roughly 6% of private sector job growth), from FY 2014 - FY 2015.

We urge Congress to enact legislation that includes the consensus reform concepts recommended in the attachment. Our shared vision for EB-5 modernization would achieve the vital goals of safeguarding our national security and deterring investor fraud while ensuring that foreign direct investment obtained through the EB-5 program continues to drive economic growth and job creation in the U.S.

The balanced principles we propose would provide market advantages to Targeted Employment Area (TEA) projects in rural communities and distressed urban census tracts designated by the U.S. Treasury Department as “Opportunity Zones.” Notably, we recommend a 30% set aside of the annual visa allotment each year for investors in TEA projects, which would be split equally between Rural and Urban Distressed communities.

We agree that EB-5 investment amounts should substantially increase. With over 95% of the market currently at a \$500,000 level, our consensus recommendations increase the minimum investment amounts for a project located in a TEA to \$800,000, and to \$900,000 for a project not located in a TEA. Our organizations believe this \$100,000 differential would properly balance the interests between TEA and non-TEA stakeholders and ensure that all areas of the U.S. can adequately compete for capital through the EB-5 program. These minimum investment amounts should be indexed to inflation moving forward.

Our consensus recommendations also help reduce the overwhelming backlog of pending investor petitions that is choking the regional center program. In the current marketplace, protracted EB-5 wait times have slowed inbound foreign capital to a trickle; the U.S. is losing investment dollars to other countries that have more streamlined, less bureaucratic foreign investment programs. The effect of our suggested backlog reduction fee, combined with relief providing that family members do not count toward the overall EB-5 visa cap, is estimated to reduce visa wait times significantly – from 7-15 years (depending on nationality) down to 3.3 years. These backlog reduction reforms are calibrated to allow the U.S. to regain its edge against rival countries in the highly competitive global market for foreign investment capital.

The EB-5 Regional Center program should be reauthorized for a sufficient period of time so the comprehensive reform package has enough time to take hold and generate positive economic impacts. Our organizations strongly believe that the short-term cycle of status quo extensions tied to continuing resolutions must end. We suggest that six-year reauthorization is appropriate.

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.

American Hotel & Lodging Association

American Immigration Lawyers Association

American Resort Development Association

EB-5 Investment Coalition

Invest in the USA (IIUSA)

National Association of Home Builders

National Association of REALTORS®

National Multifamily Housing Council

Real Estate Board of New York

Rural Alliance

The Real Estate Roundtable

U.S. Chamber of Commerce

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

**CONSENSUS RECOMMENDATIONS FOR
EB-5 REGIONAL CENTER REFORM**

- ***Duration of Reauthorization***
 - The program’s authorization should be extended for six years.

- ***Integrity Measures to Bolster National Security and Fraud Deterrence***
 - DHS should be provided with the authority to conduct criminal background checks and obtain biometric information from individuals involved in the regional center program.
 - Establish new authority for DHS to debar individuals, and suspend or terminate regional centers, based on program non-compliance.
 - Clarify the authority of DHS to deny or revoke immigrant investor petitions for reasons including fraud, misrepresentation, or national security concerns.
 - Establish an EB-5 Integrity Fund to provide rigorous program oversight, which should be funded by regional center program participants.
 - Create thorough annual reporting and accounting requirements for regional center operators.
 - Enforce strict new requirements for third-party promoters marketing or promoting regional center investment projects.
 - Provide DHS with improved investigative tools to ensure that an investor’s funds are derived from legitimate and lawful sources.
 - Provisions to ensure that USCIS engages in a proper and non-preferential way with any person or entity involved in the EB-5 program.
 - Clarify that, in the context of EB-5 offerings, any person who qualifies as a “broker” or “dealer” in the purchase or sale of securities must comply with all registration and other requirements of the Securities Exchange Act of 1934, and meet appropriate Financial Industry Regulatory Authority (FINRA) requirements.

- ***Targeted Employment Area (TEA) Definitions***
 - Rural Area definition: We support the current statutory definition and the inclusion of low-population, low density census tracts into the “rural” definition. We do ***not*** support allowing the “outlying counties” of a Metropolitan Statistical Area to qualify as “rural,” which was suggested in prior reform proposals.
 - Urban Distressed Area definition: To address concerns with regard to “gerrymandering,” we suggest limiting these TEAs to a single-census tract that is designated by the U.S. Treasury Department as a “Qualified Opportunity Zone,” as per the *Tax Cuts and Jobs Act*.¹

- ***Investment Amounts***
 - Establish and maintain a \$100,000 differential between the two investment levels.
 - Our recommended new minimum investment level for TEAs is \$800,000.
 - Our recommended new non-TEA amount is \$900,000.
 - These levels should be indexed to inflation going forward.

¹ See <https://www.cdfifund.gov/Pages/Opportunity-Zones.aspx>.

- ***TEA Set-Asides***
 - 15% of visas for Rural
 - 15% of visas for Urban Distressed
 - Unused visas roll-over annually at the end of each year to general visa pool for access by all projects in the immediately following year
 - The set asides apply immediately to new I-526 petitions filed after enactment, but they cannot be applied retroactively towards petitions that were pending as of the date of enactment.

- ***Transition Rules to New Program Requirements***
 - For one year after enactment, we suggest a single investment level for all projects at \$650,000 to provide stakeholders with the ability to wind-down their existing operations and adjust to the program's reforms.
 - In 13th month after enactment, the two-tiered investment amounts should take effect.
 - Individual I-526 petitions that were pending up to date of enactment should be grandfathered and ***not*** subject to new investment amounts. Pending petitions ***rejected*** after enactment and re-filed would be subject to new investment amounts.

- ***Automatic Expedited Processing for Investors in TEAs***
 - Moving forward, Rural and Priority Urban TEA investor petitions would receive expedited processing for all I-526 petitions filed post-enactment.
 - Non-TEA investors must still meet current criteria to qualify for expedited processing.

- ***Backlog Relief and Suggested Additional Revenue Source***
 - All pending applicants in queue (approximately 30,000) should have the option to pay a one-time "backlog reduction fee" to re-set the program.
 - We recommend that this fee be \$50,000. To ensure the opportunity for backlog relief is exercised in an orderly manner, investors would only be able to pay this supplemental fee during the one-year period following the enactment of these reforms.
 - The revenues raised by the EB-5 backlog fee should be maintained separately for use by Congress for programs deemed in the national interest.

- ***Exempting Derivative Family Members***
 - The visas provided for the spouses and children of EB-5 investors should no longer count against the annual EB-5 visa cap.
 - According to USCIS, limiting the visa count to only investor petitions would substantially increase the amount of foreign direct investment coming to the U.S. through the program and create many more jobs for American workers.

- ***Sovereign Wealth Funds (SWF)***
 - There should be no bar on SWF capital in projects also funded by EB-5 capital (as suggested in prior reform proposals).