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The Real Estate Roundtable



February 24, 2017

The Honorable John F. Kelly
Secretary of Homeland Security
Washington, D.C. 20528

Re: Notice of Proposed Rulemaking regarding EB-5 Program

Dear Secretary Kelly:

We congratulate and welcome you to your post as Secretary of Homeland Security.

We are a consortium of stakeholders comprised of U.S. enterprises utilizing the EB-5 visa program and representatives of such enterprises and investors. As you know, the EB-5 program allows foreign investors to obtain conditional residency by contributing capital to U.S. job-creating projects. On January 13, 2017, the Department of Homeland Security ("DHS") published a notice of proposed rulemaking to significantly raise the required investment levels (82 FR 4738) (the "NPRM"). Comments are due April 11, 2017.

Before your confirmation, we wrote to President Trump requesting withdrawal of these "midnight rules" proposed by the last Administration. (Please see attached letter dated January 20, 2017). At this juncture, our groups believe that proposed immigration rules should not advance in the regulatory process unless they are drafted under your, and the White House's, imprimatur. Accordingly, we re-state our request to withdraw the January 13 NPRM from the prior Administration.

Every signatory to this letter understands that the EB-5 Regional Center Program is not perfect; we all agree that this program needs to be reformed. Furthermore, all of the above-signed organizations agree that the best way to reform the program is through the legislative process. This is not to say that the agency in charge of administering the program has no role in providing more clarity to delineate proper stakeholder behavior through the regulatory process. Nevertheless, the agency should not be moving forward with proposed rules that will

jeopardize the ability of the program to continue to draw foreign direct investment to the U.S. The issue of raising minimum investment levels alone will undermine the program's functionality. The levels suggested in the NPRM are substantially higher than what has been discussed in Congress and there's no transition period for stakeholders to adjust their business practices. This type of shock will be detrimental to the EB-5 program's future viability.

The Obama Administration bifurcated the EB-5 rulemaking process by issuing the aforementioned NPRM that seeks to address arguably the most controversial issues associated with the program, as well as issuing an Advance NPRM that seeks public comment on several very important issues before the agency addressed those issues in a proposed rule. This was unfortunate because in order for a lasting solution to be reached on EB-5 reform, all of these important issues which are interconnected must be addressed together; the agency's attempt to separate some issues from others is not helpful towards achieving meaningful reforms. The agency should be addressing all of the issues in the NPRM and the ANPRM together.

Fortunately, the agency has the ability to rectify this problem. Our collective request for DHS is to withdraw the NPRM and amend the Advanced NPRM to include the issues addressed in the NPRM, namely the designation of Targeted Employment Areas and minimum investment levels, as issues for public comment. In doing so, the agency should also extend the comment period for the ANPRM 60 days to June 10, 2017, given the agency's express desire for comments supported by the data. Our organizations wish to provide the agency with reliable estimates as to the likely impacts of its proposal; in order to do so, the comment period needs to be significantly longer than it currently is. This collaborative approach would not only better inform the agency of stakeholder concerns and how to best improve the integrity and operability of the program, it will also be enlightening for the many members of Congress who are in a position to make real lasting changes to the EB-5 Regional Center Program.

As you know, the Regional Center Program needs to be reauthorized by April 28, 2017. We all remain optimistic that a legislative solution that addresses these issues can be achieved. If such a compromise is reached, the Department of Homeland Security can avoid using valuable agency resources on a regulatory effort that covers issues that will be addressed by Congress.

For these reasons, we respectfully request that the NPRM be withdrawn. To that end, we also urge the agency to amend its Advanced NPRM on EB-5 to fold the issues discussed in the NPRM into the ANPRM and extend the ANPRM's comment date to June 10, 2017. We thank you in advance for your consideration and look forward to working with you on EB-5 program enhancements.



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January 20, 2017

President Donald J. Trump
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Trump:

A week before your inauguration, the Department of Homeland Security proposed a rule that would drastically change the EB-5 investment program. With draft EB-5 reform legislation in the works and your administration having taken office, we believe this proposed regulation is simply unripe for comment. **Accordingly, we urge you and your designees to withdraw this EB-5 “midnight rule” proposed by the Department of Homeland Security’s U.S. Citizenship and Immigration Services (USCIS) on January 13 (see 82 Federal Register 4738).**

In particular, USCIS is proposing to **dramatically increase the financial burdens placed** on EB-5 investors. The proposed rule would raise these amounts to levels that far exceed those that have been proposed and are under consideration by Congress. Substantial increases like these, unaccompanied by any transition period, will shock the program and chill EB-5 investment into U.S. companies indefinitely. We are concerned that such a change could put our country at a serious disadvantage in the highly competitive global marketplace to compete for foreign resources and bring them to our shores.

The U.S. Department of Commerce recently released a report citing significant economic and job creation benefits from the EB-5 program. The Commerce Department concluded that EB-5 investors provided \$5.8 billion in capital to invest in 562 projects located in the United States. Using data from FY12-FY13, these projects were expected to create an estimated 174,039 jobs for American workers.

USCIS stated that it could not fully consider the economic impacts of its proposed burdensome requirements, and how they might hinder the job benefits estimated by the Commerce

Department. Given the uncertainties on this critical point, this proposed rule should be withdrawn to provide more time to study these impacts. Given that new legislation in the works for over 18 months may supersede these regulations, USCIS's proposal is premature.

Moreover, Congress must reauthorize the EB-5 "regional center" program before it lapses on April 28, 2017. This will be one of the first key legislative deadlines your administration must address. Collecting comments now on USCIS's rushed proposed rule puts the cart before the horse.

EB-5 can also help unleash the vast potential for private investment capital to co-invest with public funds to modernize our nation's crumbling infrastructure—opportunities beyond the scope of USCIS's untimely proposal. We look forward to working with your administration, and to continuing our discussions on Capitol Hill regarding legislative reform, to create American jobs and re-authorize EB-5 in a manner that safeguards national security, deters investor fraud, and allows projects in diverse locations to fairly access EB-5 capital.

Thank you for considering our request to withdraw USCIS's proposed EB-5 rule. We look forward to working with you and your team and to creating American jobs.