



AMERICAN
IMMIGRATION
LAWYERS
ASSOCIATION



The Honorable Robert Goodlatte
Chair
House Judiciary Committee
2138 Rayburn HOB
Washington, D.C. 20515

The Honorable John Conyers, Jr.
Ranking Member
House Judiciary Committee
B351 Rayburn HOB
Washington, D.C. 20515

September 12, 2016

Dear Chairman Goodlatte and Ranking Member Conyers:

Our organizations thank you for your on-going commitments to reauthorize and improve the EB-5 investment program. We have a common objective to optimize the program's primary goals to create American jobs and provide capital to finance all types of economic development projects across the U.S.

On numerous occasions, we have called for a suite of EB-5 reforms to ensure national security is enhanced and fraud is deterred. Your EB-5 reform bill, H.R. 5992, scheduled for mark-up on Wednesday, September 14, includes a number of such "integrity measures." We believe these provisions should be the top priority in reform discussions. They are the most critical to preserve the EB-5 program. They have also received the widest bipartisan support in both chambers. Our groups respectfully suggest that, with some fine-tuning of language along the lines we have previously shared with your offices, consensus could be reached in short order to perfect H.R. 5992's fraud deterrence and national security provisions. Thank you for putting them forward.

While EB-5 must ensure national safety and prevent fraud above all, businesses and investors must also find the program workable and usable. Regretfully, we are unable to support many of the provisions in H.R. 5992 because we believe they would hurt businesses and investors. Over our many months of negotiations and meetings, nothing of what we say here will be a surprise to you. With the release of H.R. 5992 a mere two days before its scheduled mark-up, we must unfortunately re-state our objections to the latest iteration of your proffered language because we are concerned that it:

- Unfairly changes the “rules of the game” with retroactive mandates on businesses and investors who could not predict H.R. 5992’s profound legislative changes at the time they filed valid applications meeting all then-existing program requirements;
- Imposes new investment requirements that do not adequately balance the interests of all stakeholders across the country;
- Locks-up visas with rigid “set asides” that will exist in perpetuity, which will not only exacerbate USCIS’s EB-5 processing backlog, but has the potential to exacerbate similar problems in the entire employment-based immigrant visa system;
- Perpetuates one of the program’s main faults by failing to create thriving opportunities for financing at both levels of EB-5’s two-tier pricing system;
- Compounds Dodd-Frank’s over-regulation by increasing lending risk and preventing diversification of capital sources needed to finance larger projects that have the most complex financing structures, create the most jobs, and have the deepest supply chain ripple effects that benefit local economies far away from where the project itself is located;
- Conflicts with global financial policy by precluding our international allies from investing their sovereign funds in EB-5 projects;
- Complicates investments for infrastructure projects with confusing and conflicting standards;
- Fails to address extreme visa backlogs and further complicates investor compliance with rigid new requirements; and
- Imposes additional responsibilities on regional centers and new commercial enterprises that are not appropriate and are not the best mechanisms to achieve the intended result

While the gap in our perspectives remains wide, we still believe it can be bridged through an open, transparent and orderly process that builds consensus by gathering input from the many Members of Congress and stakeholder groups who care about the program. We look forward to participating in such a process.

The common denominators we share are to keep America safe, economically productive, and globally competitive. If done right, EB-5 reform provides a rare opportunity to achieve all of these paramount objectives. We remain optimistic that broad bipartisan support can be found to reauthorize and improve the EB-5 Regional Center program such that it addresses the most immediate problems afflicting the program, while at the same time properly balancing all stakeholder interests so projects all over the country have a reasonable opportunity to obtain foreign direct investment through the program and create jobs for U.S. workers.

Cc: Members of the House Judiciary Committee