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VIA EMAIL

December 3, 2015

United States Senate Committee on the Judiciary
Honorable Charles Grassley, Chairman
Honorable Patrick Leahy, Ranking Member

United States House Committee on the Judiciary
Honorable Robert Goodlatte, Chairman
Honorable John Conyers, Ranking Member

RE: Time is now for Reform & Long Term Re-Authorization of EB-5

Dear Chairman Grassley, Chairman Goodlatte, Ranking Member Leahy, and Ranking Member Conyers:

On behalf of Invest In the USA (“IIUSA”), we respectfully submit this letter of support for bipartisan, bicameral efforts for reform and long term re-authorization of the EB-5 Regional Center Program (the “Program”) before its December 11, 2015 expiration date. We offer this support after review of the latest draft legislation yesterday (“Senate Legislative Counsel Draft MDM15155.XML”). IIUSA shares the goal of improving program integrity and effectiveness through the reform process and appreciates the opportunity to provide input to Congress on legislation that would accomplish this objective. IIUSA’s policies are developed and adopted through a deliberative process in order to ensure that the diverse interests of our members are heard. Our members support reform that results in minimal disruption to ongoing job-creating economic activity and a fair market for attracting investors going forward. Accordingly, attached as an appendix to this letter are the policies IIUSA supports and promotes in reform and re-authorization efforts.

IIUSA is the national non-profit trade association for the EB-5 Regional Center industry with a mission of advocacy, education, industry development and research. Founded in 2005, we are a diverse organization that now boasts more than 280 Regional Center members and 230 associate members, collectively representing big and small projects, urban and rural economic development, and industry sectors ranging from real estate, manufacturing and energy to infrastructure, economic development and more. Our Regional Center members are engines for economic growth in the United States, responsible for over 95% of EB-5 capital investment nationwide. The Program now annually accounts for almost \$4.5 billion in foreign direct investment (“FDI”), billions of dollars in gross domestic product (“GDP”), tens of thousands of U.S. jobs, and billions of dollars in federal/state/local tax revenue – all at no cost to the taxpayer.

We look forward to a continued dialogue to ensure there is clarity of intent on the final provisions. Thank you for your leadership and support. Please contact me with any questions.

Sincerely,

Peter D. Joseph
Executive Director

Appendix

Background

After the introduction of S. 1501 (American Job Creation and Investment Promotion Reform Act of 2015) on June 3, 2015, which was co-sponsored by the Chairman and Ranking Member of the Senate Judiciary Committee, IIUSA responded with comprehensive comments in a letter dated July 17, 2015.¹ Later in the year, IIUSA sent a compromise proposal to Congress on how to approach the four major issues perceived to be impeding progress towards a long term re-authorization of the Program: effective dates, targeted employment areas (“TEAs”), minimum investment amount, and job creation methodologies.² The compromise was recommended and supported unanimously by the IIUSA Board of Directors, and also received unanimous support from IIUSA’s Public Policy Committee and the vast majority of our membership in a poll (83%). Most recently, IIUSA provided comments on a bipartisan and bicameral discussion draft in a letter dated November 20, 2015 that sought to address all remaining issues in time for Congress to pass long term re-authorization legislation.³

IIUSA develops and adopts policy positions only after careful and full consideration of key factors, including: global and national industry data, existing internal and external records of relevant deliberations, membership polling, committee recommendations, advisory board comments, and Board approval. We continue to honorably serve as a resource to Congress and other industry stakeholders for facts, data, and legal/policy analysis on the EB-5 Regional Center industry. The diversity of IIUSA’s membership and the percentage of EB-5 investment activity they account for, along with our consistent and open policymaking process, ensure that IIUSA’s policy positions reflect consideration of a broad range of views and interests. IIUSA considers the policies listed in the priorities below as essential to a successful reform and re-authorization effort and representative of the iterative policymaking process with Congress and other stakeholders.

IIUSA Priorities for EB-5 Reform & Re-Authorization

- **Length of Re-Authorization:** As reforms are implemented that reshape the market for investors and job-creating projects, the minimum length of re-authorization should be at least four years or more to ensure reasonable stability for the industry.
- **Effective Dates & Due Process:** All reforms must be effective as of the date of enactment or later with no retroactive application of new law. Adjudication of I-526 eligibility petitions – and I-829 petitions to remove visa conditions – must be governed by the law under which they were filed to maintain investor confidence in due process, the American legal system and – as a result – the EB-5 Program. Further, investors and Regional Centers must have standard appellate rights in the U.S. legal system.
- **Job Creation Methodologies:** New requirements for how direct and indirect job creation are measured must be based on standard economic modeling practices that account for the impact of EB-5 investment. Definitions must be clear and consistent to not limit in type or application various economic models that are widely used in economic development policy. Demonstrating compliance with the requirements must achieve the intent of enhancing accountability without being overly burdensome to job-creating projects.

¹ See: <https://iiusa.org/blog/wp-content/uploads/2015/07/IIUSA-ltr-to-Senate-Judiciary-re-S1501-FINAL-w-attachment.pdf>

² See: <https://iiusa.org/blog/wp-content/uploads/2015/11/IIUSA-ltr-to-Senate-Judiciary-Committee-re-compromise-FINAL.pdf>

³ See: <https://iiusa.org/blog/wp-content/uploads/2015/11/IIUSA-ltr-to-Congress-RE-bicameral-discussion-draft-FINAL.pdf>

- **Investment Levels & TEAs:** The minimum investment levels should be \$800,000 for TEA investments and \$1,000,000 for non-TEA investment to make sure both are competitive for attracting investors and EB-5 competitive compared to competing immigrant investor programs around the world. We have no objection to these amounts being raised on a predictable schedule of five years. We support consistent adjudication of TEA designations based on clear guidance that minimizes potential for abuse, so the policies can succeed in driving economic development in certain geographic areas (distressed urban areas or rural areas) and industry sectors (infrastructure and manufacturing).
- **Annual Visa Allocation:** Visas set aside for particular TEA categories that are not used in a given year need to be made available to the general pool of petitioners to ensure all available visas are used.
- **Streamlining Processing Procedures:** Investor petitions need to be eligible for filing while a project plan is being adjudicated even if held in abeyance while the business plan adjudication is completed. Existing requirements that require filing of duplicative records related to Regional Centers and projects should be streamlined to make the adjudication process more efficient.
- **Regional Center Compliance & Annual Certifications:** A Regional Centers can only certify compliance to the best of its knowledge and must be given opportunity to take action to cure issues before facing sanctions. Further, Regional Centers cannot be required to report details of fees paid by investors that the Regional Center is not party to nor be sanctioned for past disciplinary actions unless the transgressions were based on fraud or deceit. Also, sanctions against individuals should also be limited to the length of disciplinary action taken by a separate professional organization. Provisions related to jurisdiction of the Securities & Exchange Commission (“SEC”) over EB-5 offerings need to be consistent with existing securities laws. Lastly, when a Regional Center is terminated, investors and projects need to have an opportunity to meet program requirements, with a new Regional Center affiliation or otherwise.
- **Limiting Foreign Involvement in Regional Centers:** IIUSA raised the issue of foreign ownership of Regional Centers to USCIS and Congress in 2010, recommending use of the regulatory process to bar foreign ownership or control of Regional Centers, using the J visa program as an example of when USCIS barred foreign ownership or control of J visa-sponsoring entities.⁴ Still unresolved, the issue should be addressed as part of this reform process given the inherent immigration-related aspects of the Program involving a public good (*i.e.*, a visa), Regional Centers must be subject to U.S. anti-fraud laws in order to protect program integrity and national security.

⁴ 22 CFR 62.2 (definition of “citizen”) and 62.3(a)(3). See 52 Fed. Reg. 20097-98 (May 29, 1987); 54 Fed. Reg. 32964-67 (Aug. 1, 1989); 54 Fed. Reg. 40386-87 (Oct. 2, 1989); 54 Fed. Reg. 47976-78 (Nov. 20, 1989); and 55 Fed. Reg. 46943-47 (Nov. 8, 1990).