

# E PLURIBUS UNUM



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**T**he United States' motto is a Latin phrase meaning "out of many, one." What could be more appropriate for a nation of immigrants? The concept is as old as humanity. Families became tribes. Tribes became communities. Communities became nations and out of many, became one; singular entities more capable of defending themselves, feeding themselves, and ultimately surviving.

This survival protocol is repeated over and over again throughout our culture; in sports, in the arts, in our collective response to tragedy, and especially in politics. Coalitions are always stronger and more effective than the lone voice. In the wilderness, there is safety in numbers. In Washington, DC there is power.

Over the course of our years-long effort to secure a long-term and reformed reauthorization of the EB-5 Regional Center statute, the EB-5 community's Achilles Heel has been "e pluribus – pluribus." Differing opinions and policy positions made it easy for EB-5's political critics to drive us apart; away from each other and our common cause and ultimately disallow a meaningful reauthorization.

Today, however, out of many EB-5 interests, opinions, and priorities there is one united community. It is a political advantage we should have known, strived for and secured, but the past is the past and the stakeholders can finally leverage their unity.

It was not an easy path and there are likely

still those second guessing the decisions and compromises made. The layers and layers of interests and differing perspectives demanded and continue to require decorum and coming to terms that all your interests will simply not be met. It has been an emotional exercise as well as an academic and political trial. But, here we are, undivided and on the brink of finally bringing stability to EB-5, its Regional Centers, and the countless other stakeholders whose livelihoods depend on this more stable future.

So, who are "we?" Who are the pluribus and how can our perspectives on the same program really be that different? We are:

The Rural Alliance;

The US Chamber of Commerce;

The EB-5 Investment Coalition;

The Real Estate Round Table; and

Invest in the USA.

Collectively, we represent large and small regional centers and rural and urban interests. But that is not all. As part of both the immigration community and the business community, we also represent real estate developers, banks, technology interests, medical interests, and energy interests to name a few. Is it any wonder that there may be discord and how was it avoided this time around?

Bluntly, after years of debate a realization set in; that the EB-5 Regional Center program's protocols may be dictated by those without an appreciation of the program's true value or worse, the program may simply dissolve.

It is said that politics make for strange bedfellows. It is also said that necessity is the mother of invention. What is rarely mentioned is the effort it takes to stay in bed together let alone come to terms and create a common and plausible solution. That effort can be Herculean and credit must be given where credit is due.

Over a year ago, IIUSA's officers, Bob Kraft, Bill

Gresser, and Steve Strnisha, began meetings with the other EB-5 stakeholders mentioned above. They met first in Geneva, Switzerland then in Milwaukee, WI, New York City, and finally in Washington, DC. They and their counterparts from the other stakeholder groups cleared a path and provided their staff with direction to "stay in bed" and solve the problem. Create a compromise bill to reauthorize the Regional Center program that meets rural and urban demands.

And we did.

E pluribus unum.

Here are the salient positions.

#### • **Duration of Reauthorization**

- ▷ The program's authorization should be extended for six years.

#### • **Integrity Measures to Bolster National Security and Fraud Deterrence**

- ▷ The Department of Homeland Security (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 would be funded by regional center program participants.

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- ▷ 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 "TEA gerrymandering," we suggest limiting these TEAs to a single-census tract that is designated by U.S. Treasury Department as a "Qualified Opportunity Zone," as per the Tax Cuts and Jobs Act.
- **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.
- **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 EB-5 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, there will be 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 the 13th month after enactment, the two-tiered investment amounts would take effect.
  - ▷ Individual I-526 petitions that were pending up to the date of enactment should be grand-fathered 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) have the option to pay a one-time "backlog reduction fee" to re-set the program.
  - ▷ We recommend that this fee be \$50,000 and 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).



Now, as the united EB-5 community dialogues in earnest with policy makers on Capitol Hill, everyone knows we cannot be driven apart, let alone against one another. We created a bill that meets most of everyone's expectations not the least of which is stability through a long-term reauthorization. Critics' concerns have been appeased and there is no where to go but forward on behalf of immigrants and the economy they want to join. Out of many, one. What could be more fruitful for a nation of immigrants. ▀