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## United States Senate

COMMITTEE ON THE JUDICIARY  
 WASHINGTON, DC 20510-8276

April 5, 2018

### VIA ELECTRONIC SUBMISSION

The Honorable Kirstjen Nielsen  
 Secretary  
 U.S. Department of Homeland Security  
 Washington, D.C. 20528

Dear Secretary Nielsen:

We are writing to urge your Department to take immediate steps to finalize proposed regulations published in the Federal Register on January 13, 2017, entitled "EB-5 Immigrant Investor Program Modernization."<sup>1</sup> As the Chairmen and a former Chairman of the committees with jurisdiction over the fifth preference employment-based immigrant visa program (the "EB-5 program"), we believe these regulations advance the national interest and should be implemented without further delay.

We have watched with growing alarm as the EB-5 program has continued to stray further and further away from what Congress envisioned when we created it as part of the Immigration Act of 1990.<sup>2</sup> Some of the distortions and abuses that have come to plague this program require statutory changes. Unfortunately, while we have been intently pursuing bipartisan legislative solutions for a number of years, powerful special interest groups have stymied all efforts to reform this scandal-plagued program. Thankfully, there is much that United States Citizenship and Immigration Services can do to restore the program to its original vision.

Two years ago we wrote to then-Secretary of Homeland Security Jeh Johnson urging him to take all necessary and appropriate steps to reform this program, and we outlined in that letter what we believed those steps should be.<sup>3</sup> We were extremely pleased when then-Secretary Johnson issued the proposed EB-5 Immigrant Investor Program Modernization regulations in January 2017.

As we have noted several times since the publication of these proposed regulations, they would, if finalized, dramatically reform the EB-5 program and re-align the program with what

<sup>1</sup> 82 Fed. Reg. 4m738 et. seq. (2017) (proposed rule)

<sup>2</sup> Section 121(a) of part 2 of subtitle B of title 1 of Pub. L. No. 101-649(1990).

<sup>3</sup> Letter from Bob Goodlatte, Charles Grassley, John Conyers, Jr., and Patrick Leahy to Jeh Johnson, Secretary, DHS (March 2, 2016).

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Congress envisioned in 1990.<sup>4</sup> We were, and remain, supportive of these regulations. We believe they will generate increased capital investment for the United States economy, and will help ensure that some portion of that capital is actually invested in rural and underserved areas, as Congress intended.

As you are likely aware, since last May there have been new rounds of Congressional negotiations on the future of the EB-5 Regional Center Program. We understand that during the course of these negotiations your Department was encouraged by both individual Members of Congress and stakeholders to *not finalize* the proposed regulations, since a potential legislative solution could be imminent. Recently, these good-faith negotiations collapsed due to the opposition of the same special interest groups who have worked to derail all efforts to reform the program.

Because we do not foresee a legislative solution in the near term, we believe that it is incumbent upon you to end all delays and issue the proposed regulations in final form. The proposed regulations are firmly within your explicit statutory authority provided by Congress when we created the EB-5 program, and there can be no dispute that they address a number of serious deficiencies in the program.

We separately ask you to continue to do everything within your power, either through new administrative regulations or other programmatic reforms, to curb the rampant fraud within the EB-5 program, to include increased use of mandatory audits, site visits, and other measures to ensure securities law compliance in conjunction with the Securities and Exchange Commission.

In conclusion, we applaud your Department for issuing the proposed regulations and once again call on you to issue them in final form. We look forward to continuing to work with you once the final regulations are issued to ensure the vitality and integrity of the EB-5 program and our nation's lawful immigration system.

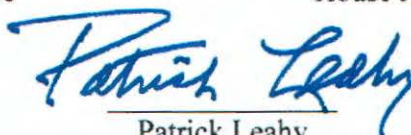
Sincerely,



Charles E. Grassley  
Chairman  
Senate Judiciary Committee



Bob Goodlatte  
Chairman  
House Judiciary Committee



Patrick Leahy  
Vice Chairman  
Senate Appropriations Committee  
Former Chairman  
Senate Judiciary Committee

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<sup>4</sup> Letter from Bob Goodlatte, Charles Grassley, John Conyers, Jr., and Patrick Leahy to Samantha Deshommes, Acting Chief, Regulatory Coordination Divisions, U.S. Citizenship and Immigration Services (April 11, 2017).





U.S. Citizenship  
and Immigration  
Services

June 12, 2018

The Honorable Charles E. Grassley  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Chairman Grassley:

Thank you for your April 5, 2018 letter. Secretary Nielsen asked that I respond on her behalf.

U.S. Citizenship and Immigration Services (USCIS) shares your interest in ensuring that the EB-5 program is administered with the greatest integrity. Reforming the EB-5 program is a regulatory priority for the Department of Homeland Security (DHS) and USCIS.

As you know, in 2017, DHS published the EB-5 Immigrant Investor Program Modernization Notice of Proposed Rulemaking (NPRM), which proposed, among other changes, to increase the minimum investment amounts for new EB-5 petitioners and reform the targeted employment area designation process. DHS also published an Advance Notice of Proposed Rulemaking (ANPRM) regarding certain aspects of the EB-5 regional center program and requested public comment on those potential changes. A number of potential regulatory changes discussed in both the NPRM and ANPRM are intended to further support and enhance EB-5 program integrity. The agency is moving forward with rulemaking on both notices and anticipates regulatory action soon. The Fall 2017 Unified Agenda includes a Final Rule for the NPRM discussed above and an additional Notice of Proposed Rulemaking to make further operational and security updates to the EB-5 program. We invite you to view the Unified Agenda for more information and to provide comments on the coming EB-5 Notice of Proposed Rulemaking when it publishes in the *Federal Register*.

Aside from regulatory reforms, USCIS continues a series of administrative reforms to improve the program. USCIS terminates regional centers that no longer promote economic growth or fail to submit required information, resulting in the termination of 83 regional centers in fiscal year (FY) 2017 and 64 in FY 2018 to date. For those regional centers in operation, we have begun a compliance review program to verify the evidence provided by designated regional centers in applications and annual certifications. We also verify compliance with applicable laws and authorities to ensure continued eligibility for the regional center designation.

The Honorable Charles E. Grassley

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Finally, we conduct site visits to the EB-5 petitioners' job creating entities to ensure that projects are operating as expected. Of the 221 projects USCIS visited in FY 2017, 153 were operating as expected. For those projects that are not operating as expected, we have scheduled interviews or requested additional evidence from petitioners prior to our adjudication of petitions to remove conditions on permanent residence.

Thank you again for your letter and your interest in this important issue. The co-signers of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative and Intergovernmental Affairs as (202) 272-1940.

Respectfully,

A handwritten signature in black ink, appearing to read "L. Francis Cissna". The signature is stylized with a large "L" and a cursive "Cissna".

L. Francis Cissna  
Director