Testimony
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Introductory Thanks

Chairman Goodlatte, Ranking Member Conyers and Distinguished Members of the Committee: Thank you for inviting me to testify today on the proposed EB-5 Immigrant Investor Program regulations. My name is Dekonti Mends-Cole and I currently serve as the Director of Policy at the Center for Community Progress, based in the Washington D.C. office.

About the Center for Community Progress

The Center for Community Progress is a national nonprofit focused on addressing vacancy and abandonment to revitalize distressed communities in urban, suburban and rural areas. Headquartered in Flint, Michigan with staff in Detroit, Upstate New York, New Orleans, Chicago and Atlanta, our organization supports the revitalization of America's older industrial regions and places, as well as, communities that, for decades, have experienced an exodus of population and industry. We believe that a reformed EB-5 program presents an opportunity to revitalize places experiencing economic distress and in the greatest need of at-risk capital to spur growth in places such as Detroit, MI, Cincinnati, OH and Scranton, PA.

About the EB-5 program

The EB-5 program introduced in 1990 was intended to be an innovative financing tool that encouraged job growth, incentivized investment and recruited *at-risk* capital to disinvested communities.[1] The program was largely dormant until the early 2010s when increased immigrant interest from China coupled with an increased demand for low-cost mezzanine finance drove take-up. At the same time as EB-5's use began to increase exponentially, a widening disparity began to emerge between recovering markets and those that are currently on downward trajectory.[2] From 2010 to 2013, the most prosperous 10 percent of zip codes saw employment climb by 22 percent and the number of businesses rise by 11 percent, while the most distressed 10 percent of zip codes lost 13 percent of their jobs and saw a business closure rate of 1 in 10.[3] Fifty million Americans live in the country's most distressed communities characterized by low job growth, high vacancy and out of work adults as high as 55%. [4]

The program has become disconnected from its original purpose. Immigrant investor capital, rather than serving as a catalyst for growth in communities experiencing job and industry loss, has sought the safe havens of high-return and low-risk projects in the country's most prosperous census tracts. This has been made possible by the gerrymandering of EB-5

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[1] https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/about-eb-5-visa-classification.
[2] The Economic Innovation Group, *Distressed Communities Index*, 2016. http://eig.org/wp-content/uploads/2016/02/2016-Distressed-Communities-Index-Report.pdf The report includes an economic distress indicator that captures both economic distress and disinvestment it includes: percent of the population 16 years and older not in work, percent change in the number of jobs from 2010 to 2013, percent change in the number of business establishments from 2010 to 2013, ratio of a geography's median income to its state's median income, percent of the population living under the poverty line, percent of the population 25 years and older without a high school degree, and percent of habitable housing that is unoccupied, excluding seasonal and recreational use.
[3] Id. at 11.
[4] Id. at 9. Adults not working includes everyone above 16 years old that is not currently employed.

investment areas. It is not a coincidence that EB-5 capital is heavily concentrated in the states with the highest populations living in prosperous zip codes: California, New York, Texas, New Jersey and Illinois.[5]

About the testimony

This testimony aims to shift the EB-5 conversation beyond high density, high growth, largely coastal cities and support Chairman Goodlatte's, Ranking Member Conyers', Senator Leahy's, Senator Grassley's, and the Department of Homeland Security's efforts to better target EB-5 capital and stimulate economic growth in America's distressed communities.

I will focus on three issues in the proposed regulation 1) adoption of a national designation for Targeted Employment Areas (TEAs) 2) the definition of TEAs and 3) the differential in the investment levels between TEAs and non-TEAs.

A National Designation for TEAs

Targeted Employment Areas are defined under the current legislation as a rural area or an area, which has experience unemployment of at least 150% of the national average rate. To incentivize investment in such areas, the program offers a discounted cost of entry, currently set at $500,000 (as compared to $1 million for non-TEA areas). [6] The purpose of designating and incentivizing investment in TEAs is to attract capital where projects are difficult to finance. Under current rules, states are authorized to designate TEAs and have often used this authority to approve them in high-value census tracts.[7]

A national designation provides the opportunity to better align the TEA designation with the intended purpose of the program and overcome the "the application of inconsistent rules across the states" as noted in the background text of the proposed regulation. [8] A national designation based on a narrow TEA definition would ensure greater consistency and direct the TEA incentive to areas where investment is most needed.

Definition of TEA

A narrow definition of TEAs that focuses on census tracts (1) in which the commercial enterprise receiving the investment is "principally doing business" [9] and (2) that have a weighted average unemployment rate of 150% of national average[10] would prevent TEA gerrymandering. A February 2017 article published by EB-5 experts and scholars, Professor Gary Friedland and Professor Jeanne Calderon, applied the following proposed regulation TEA definitions to a sample of 52 projects: 1) Single Census Tract- the unemployment rate of a project sitting in a single census tract is at least 150% of the national average and the 2) Contiguous Census Tract- the weighted average of the unemployment rate for the project census tract and a contiguous tract is at least 150% of the national average.[11] Friedland and Calderon found that only two projects of the 52 in the sample qualified under the 'single census tract' definition and only four would qualify under the 'contiguous census tract' definition.[12] This narrower TEA definition would prohibit projects from including a high unemployment census tract that is in close proximity, but not receiving any direct investment from the project. It would also better align with similarly targeted programs criteria such as New Market Tax Credits.

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[5] Id. at 11.

[6] USCIS, *supra* note 1.

[7] Immigrant Investor Program Modernization, 82 Fed. Reg. 9 (January 13, 2017). *Federal Register: The Daily Journal of the United States*. Web. 7 March 2017.

[8] Id. at 4747.

[9] as defined by USCIS policy in effect during rulemaking as: the location where it regularly, systematically and continuously provides goods or services that support job creation, USCIS Policy Manual, 6 USCIS-PM G (Nov. 30,2016)

[10] See note 7 at 4747. Weighted unemployment rate for each census tract is calculated by USCIS at the time of the rulemaking as the labor force (civilians ages 16 and older who are employed or employed plus active duty military) divided by the labor force in the entire TEA area.

[11] Friedland, Professor Gary and Professor Jeanne Calderon. *EB-5 Proposed Regulations: A Missed Opportunity, Next Steps For Reform"*. NYU Stern Center for Real Estate Finance Research, 2017. p. 15-16.

[12] Id.

The proposed regulations would more effectively target dollars to hard to recruit capital areas than the two other models that have been suggested: the California 12-tract model or the commuting pattern model[13]. Both these models would continue to permit investors to enter at the lowered investment level in high growth census tracts, if applied nationally, and are less likely to recruit capital to distressed communities than what is outlined the proposed regulation.

Investment Differential

The difference in the required investment levels between TEAs and non-TEAs, which is set at $500,000 in the current legislation, has proven to be a valuable incentive to both investors and regional centers. EB-5 investment is completely at-risk and investors seeking to minimize their risk have favored lower cost of entry projects in TEA designated areas. As stated in the proposed rule's background text, 97% of petitions filed in 2015 sought the reduced investment amount. [14]

A sizeable differential between TEA and non-TEA areas in conjunction with a narrowly defined TEA is necessary to attract capital to the most economically distressed areas. Disinvested communities experiencing job and population loss present a greater investment risk and investors should be adequately rewarded for taking such risk with a substantially lower cost of entry. Based on the high number of petitions seeking the lowered investment amount, the differential of $450,000 in the proposed regulation reasonably accounts for the higher-risk in TEAs and adequately incentivizes immigrant investors to support difficult to finance projects.

Concluding Thanks

Thank you for the opportunity to present and I would be happy to take any of your questions.

[13] The TEA designation used by the state of California allows up to 12 contiguous census tracts. The proposed commuter pattern model requires a commuter pattern analysis and defines TEAs as encompassing the area in which workers may live and commute from rather than where the investment is made. *See* note 7 at 4749.
[14] *See* note 7 at 4747.