ACCELERATING IMPACT INVESTING INITIATIVE AI3

April 11, 2017

Ms. Samantha Deshommes
Acting Chief, Regulatory Coordination Division, Office of Policy and Strategy
US Citizenship and Immigration Services, Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529

Re: EB–5 Immigrant Investor Program Modernization (Docket No. USCIS–2016–0006)

Dear Ms. Deshommes:

On behalf of the Accelerating Impact Investing Initiative (AI3), thank you for the opportunity to provide comments on the Department of Homeland Security's (DHS) proposed rulemaking for the EB-5 Immigrant Investor Program.

The AI3 was launched in 2013 to spark a national conversation about the federal government's role in improving and expanding the market for impact investments in the US. The AI3 team works with a national network of investors, practitioners, policy experts and other stakeholders to conduct original research, advocate for changes to public policy and build out the market infrastructure necessary to grow the impact investing field. The initiative is co-led by Enterprise Community Partners, a national nonprofit organization that helps to finance, build and advocate for affordable housing for low- and moderate-income households, and Pacific Community Ventures, a nonprofit community development financial institution (CDFI) that focuses on supporting small businesses in underserved communities, with research support from the Initiative for Responsible Investment at Harvard University.[1]

By definition, impact investments are made with the intention to generate measurable social or environmental impact alongside a financial return.[2] Since EB-5 investments are required to create at least 10 domestic jobs, one could argue that the program is one of the earliest examples of federal impact investing policy – even though the program was created almost two decades before the term "impact investing" was coined. That said, more can and should be done to ensure that EB-5 capital is put to the most productive use across the country, with a focus on communities, populations and sectors of the economy that tend to be overlooked by conventional investors.

Throughout the program's 27-year history, DHS has encouraged EB-5 capital to flow to high-need communities through the designation of "targeted employment areas" (TEAs), defined as regions that are either rural or experiencing high levels of unemployment. The AI3 team supports DHS's decision to rethink the process and criteria for designating TEAs to better align with the program's original intent, including the proposal to replace the current state-based system with a more centralized national system.

[1] To learn more about the AI3 and see our work, visit www.acceleratingimpactinvesting.org.
[2] To learn more about impact investing, visit https://thegiin.org/impact-investing.

However, we urge DHS to reconsider its proposal to increase the minimum investment amount in TEAs from $500,000 to $1.35 million. The current TEA threshold is a strong and effective incentive for EB-5 participants to invest in high-need communities, which is one reason why the vast majority of EB-5 investments each year are made in TEAs.[3] While a modest increase might be justified, nearly tripling the threshold, as proposed, could meaningfully dampen investor demand, both for TEAs and the EB-5 program generally.[4]

Alternatively, DHS could maintain the current threshold of $500,000 for eligible investments in TEAs that, in addition to creating at least 10 jobs, achieve other social or economic outcomes for the community, such as the creation of affordable housing. For example, if an EB-5 investor chooses to invest in a mixed-use development with market-rate apartments in a TEA, the investor would be subject to the proposed threshold of $1.35 million. But if a certain percentage of the apartments in the property are rent restricted and reserved for low- or moderate-income households, based on standards set by DHS in consultation with the Department of Housing and Urban Development (HUD) and other agencies, the investor would be subject to the current threshold of $500,000.

In the coming months the AI3 team will release a white paper laying out specific proposals for DHS and Congress to strengthen the EB-5 program's impact on underserved communities. The paper will include a set of recommendations for the designation of TEAs, as well as additional incentives to encourage investors to pursue social and economic outcomes beyond job creation, such as the example described above.[5]

We look forward to working with DHS, the White House and members of Congress to strengthen the EB-5 program, with a dual focus on mitigating fraud and maximizing the impact of each invested dollar. If you have any questions about the AI3 or any of the above comments, please contact me directly at jgriffith@enterprisecommunity.org or Marion McFadden, Enterprise's Vice President for Public Policy, at mmcfadden@enterprisecommunity.org.

Sincerely,

John P. Griffith
National Director for State & Local Policy at Enterprise Community Partners
Project Director of the Accelerating Impact Investing Initiative

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[3] Bipartisan Policy Center, "EB-5 Program: Successes, Challenges, and Opportunities for States and Localities," available at: http://bipartisanpolicy.org/wp-content/uploads/2015/09/BPC-Immigration-EB5-Visa-Program.pdf.
[4] See March 8, 2017 testimony before the House Judiciary Committee by Angelique Brunner, Founder and President of EB5 Capital, available at: http://docs.house.gov/meetings/JU/JU00/20170308/105660/HHRG-115-JU00-Wstate-BrunnerA-20170308.pdf.
[5] For example, in reauthorizing the EB-5 program, Congress could broaden the definition of TEA to include regions with high levels of rent burden, meaning a high percentage of renters pay more than 30 percent of their monthly income on housing, or provide flexibility on the job creation requirement if the investor provides affordable housing in the development.