

March 8, 2019

The Honorable Mick Mulvaney
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Our organizations have supported, and we continue to support, a set of comprehensive legislative reforms to the EB-5 Regional Center program that will safeguard national security, combat instances of fraud, change how economically distressed Targeted Employment Areas (TEAs) are defined with objective criteria, and reasonably increase the program's investment levels. We have sought to balance the interests of diverse stakeholders so that rural and urban areas have access to EB-5 investments. Our organizations continue to believe that congressional action is the best way to achieve lasting reform.

Regulations proposed during the Obama Administration are currently being reviewed by the Office of Information and Regulatory Affairs (OIRA). Our organizations are concerned that these rules will fall far short in achieving the reforms necessary to improve and sustain the EB-5 program over the long term. The regulations do not address the program's national security and fraud concerns. Nor do they effectively balance the interests of stakeholders through the creation of a workable visa "set aside" for projects in rural and urban distressed communities. Final publication of rules that derive from an Obama-era proposal would undermine the efforts to fully reform and extend the program in Congress.

Moreover, there is no indication that the rule submitted to OIRA has satisfied the Executive Order signed by President Trump on December 12, 2018, "Establishing the White House Opportunity and Revitalization Council." This order establishes a multi-agency council – including the OMB Director and other agency heads – to:

- "[A]ssess the actions each agency can take under existing authorities to prioritize or focus Federal investments and programs on urban and economically distressed communities, including opportunity zones."
- "Assess ... all regulatory and administrative costs and burdens that discourage public and private investment in urban and economically distressed communities, including opportunity zones."

"Opportunity Zones" are a creation of the "Tax Cut and Jobs Act" – a signature legislative achievement signed by President Trump in December 2017. The Treasury Department finalized its census tract-based Opportunity Zone designations in June 2018 – well over a year after the Obama Administration proposed its changes to the census tract-based TEA designation criteria that have advanced for OIRA's review. While the Trump Administration has established an important policy goal of incentivizing investments in our nation's economically distressed and rural communities, we cannot discern a sound policy basis to establish two different sets of census tract designation criteria to achieve the same policy objective. It is not

evident that DHS considered this overlap and presented it to OIRA. Certainly, the public never had the chance to comment on whether the proposed TEA designation criteria, as directed by Executive Order 12866, are “in greater alignment with the President’s priorities” concerning Opportunity Zone investments. Indeed, signatories to this letter agree that the EB-5 program should be reformed in a manner that would make “economically distressed” TEA eligibility criteria identical with Qualified Opportunity Zone designations. The best way to accomplish this profound change to the EB-5 program is through the legislative process, which is yet another reason that our organizations favor congressional reform over regulatory action at this time.

The fullest possible suite of reforms is necessary to sustain EB-5 project capital so that it can bring significant economic and job creation benefits to the U.S. economy. A soon to be released report estimates that the Regional Center program brought a total of \$10.98 billion into the country, and created more than 355,000 U.S. jobs (roughly 6 percent of all job gains), from 2014-2015. The regional center program also boosted GDP by adding \$55 billion (or 3 percent of economic output) over that period.

We believe that action by Congress to finally reform and improve the program is necessary to balance all of the priorities of the diverse organizations on this letter. With respect, we collectively request that the DHS proposal currently being reviewed by OIRA not be approved for final implementation at this time. We welcome an opportunity to discuss how our compromise legislative package achieves a more holistic solution to bring long overdue improvements to the EB-5 program.

American Hotel & Lodging Association

American Resort Development Association

Building Owners and Managers Association (BOMA) International

EB-5 Investment Coalition

EB-5 Rural Alliance

National Apartment Association

National Association of Home Builders

National Association of REALTORS®

National Multifamily Housing Council

Real Estate Board of New York

The Real Estate Roundtable

U.S. Chamber of Commerce