

May 15, 2013

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Charles E. Grassley  
Ranking Member  
Committee on the Judiciary  
United States Senate  
224 Dirksen Senate Office Building  
Washington, DC 20510

Re: ***Technical Change to Leahy2-(MRW13335) Amendment Regarding  
EB-5 Program***

Dear Chairman Leahy and Ranking Member Grassley:

The undersigned organizations representing the U.S. real estate industry support pro-growth, comprehensive immigration reform. Immigration legislation will affect the full spectrum of real estate – commercial and residential development, property investment and ownership, and building management and construction.

We write with regard to the above-referenced amendment to S. 744 offered by Chairman Leahy concerning the employment based “EB”-5 program. Our organizations wholly support the amendment insofar as it makes the EB-5 program permanent; makes the “regional center” program more open, transparent and fiscally accountable; and clarifies the method to calculate the requisite number of jobs created under the program. However, we urge a technical amendment to Leahy #2, to ensure that EB-5 investment dollars can be fairly apportioned among our nation’s urban, suburban and rural areas, and to tether the program to its overriding purpose to create jobs.

The amendment revises the definition of “high unemployment area” to encompass “contiguous census tracts” where the unemployment rate is at least 150 percent of the national average, and also includes at least one census tract where 20 percent of its residents live below the poverty level. The requirement for “contiguous” census tracts will address concerns that have been raised regarding gerrymandering of boundaries for Targeted Employment Areas (“TEAs”). The unemployment rate requirement, which is part of current law, stays true to the EB-5 program’s purpose as an engine for jobs growth.

However, we are concerned that the new definition’s “poverty level” requirement for census tracts could hinder development projects in the nation’s urban and suburban growth centers. By adding a poverty requirement to the “high unemployment area” definition, the Leahy #2 amendment will make it dramatically more difficult for urban core centers and suburban ring communities to receive TEA designations, and hence qualify for EB-5 funds. Given their middle class and workforce characteristics, mid-size cities and their outlying communities might not be as diverse in terms of poverty-level demographics but may still suffer from unemployment above

the national average. Those communities should be eligible for EB-5 investment opportunities. The program's status quo should be maintained by defining TEAs in terms of their unemployment level, and not their level of wealth or socioeconomic status in comparison to other areas.

In addition, our organizations also encourage the Committee to foster growth in areas identified by counties and municipalities as prime locations for development. We thus suggest that "high unemployment areas" should not be solely defined with regard to enterprise zones and similar designations made by federal and state governments. To be more inclusive, the Leahy #2 amendment should also encompass areas that cities, counties, and municipalities have identified within their own economic development incentive programs. Decisions as to where growth, development, and re-development should occur are matters of local prerogative. And, denser urban and suburban rings typically have amenities and infrastructure (such as water, sewer, roads, rail and mass transit) already in place to accommodate further development – the hallmarks of "smart growth." Congress has always been deferential in providing funding and infrastructure assistance to those communities that local and regional planning organizations deem appropriate for additional growth. We thus encourage a revision to the amendment to continue this history of deference. Through our recommendation, EB-5 funds would be available to economic development zones identified by cities and counties through their land use, infrastructure planning, and community stakeholder processes, along with similar zones identified by federal and state agencies. All areas will benefit.

Thank you for the opportunity to provide these comments. Our suggestions for a technical amendment to Leahy #2 follow on the next page. We believe our suggested changes will appropriately channel investment capital to communities across our nation's rural, suburban, and urban areas. For more information, please contact Duane J. Desiderio, Vice President and Counsel with The Real Estate Roundtable ([ddesiderio@rer.org](mailto:ddesiderio@rer.org); (202) 639-8400).

American Hotel & Lodging Association

American Resort Development Association

Building Owners and Managers Association (BOMA) International

NAIOP, Commercial Real Estate Development Association

National Association of Home Builders

National Association of REALTORS®

The Real Estate Roundtable

**Suggested Technical Amendment from National Real Estate Organizations to  
Leahy2-(MRW13335) Amendment to S. 744:**

Starting at p. 27, line 13:

(iii) The term ‘high unemployment ~~and poverty~~ area’ means—

- (I) an area consisting of a census tract or contiguous census tracts that has an unemployment rate that is at least 150 percent of the national average unemployment rate ~~and includes at least one census tract with 20 percent of its residents living below the poverty level as determined by the Bureau of the Census;~~ or
- (II) an area that is within the boundaries established for purposes of a Federal, ~~or State, city,~~ or county economic development incentive program, including areas defined as Enterprise Zones, Renewal Communities, Promise Zones, and Empowerment zones.