

1 the reduced amount was primarily aimed to stimulate
2 immigrant investment in rural areas, but also intended for
3 depressed areas or inner cities. His aim was to
4 incentivized~~x~~ investment in areas that were unable to attract
5 capital.

6 Senator Paul Simon expected that most investors would
7 invest at the \$1 million level. Contrary to this original
8 intent, under the current system all projects qualify as a
9 TEA, including those in affluent areas, so all immigrants
10 invest at the discounted \$500,000 level.

11 Congress has the opportunity to take a fresh approach
12 as to which locations or project types should be
13 incentivized. Congress should be respectful of but not
14 constrained by the original intent.

15 In any event, we recommend that Congress test the
16 effectiveness of any new TEA definition by mapping key areas
17 such as Manhattan and reviewing TEA designation letters
18 issued to the largest real estate projects. This will
19 increase the likelihood that the law will work to
20 incentivized~~x~~ the desired locations.

21 The census tracts should be reviewed to determine
22 whether they would qualify or not based on these standards.
23 The TEA designation letters reveal the number of tracts that
24 were combined to create the TEA. We applied the alternative
25 TEA definitions contained in S. 1501 discussion drafts to

1 New York City because it is the epicenter of the debate.

2 We have compiled a database of 52 large-scale EB-5
3 real estate projects that would raise more than \$10 billion
4 of EB-5 capital, requiring more than 20,000 investors that
5 translates to more than 50,000 visa applicants. This might
6 be a good starting point for testing the number of tracts
7 that comprise the relevant TEA for each project.

8 The California 12-tract approach is hailed as the
9 model. This is certainly an improvement over the virtually
10 unlimited gerrymandering permitted by some States. However,
11 we do not know how many existing large projects would still
12 qualify under that approach. The Beverly Hills Waldorf
13 Astoria recently qualified under the California model and at
14 the least suggests that further scrutiny is required.

15 USCIS has fostered gerrymandering since 1991. When the
16 law was passed, its predecessor chose to delegate authority
17 to make all TEA designations to the individual States
18 without any rules or oversight. The States, motivated to
19 promote economic development, approved virtually every
20 project. USCIS has the power to correct this. It could
21 establish uniform, objective TEA rules. The individual
22 States could continue to administer the process, or it could
23 revoke the State's authority and transfer it to the CIS
24 national office as contemplated by S. 1501. As USCIS
25 formulates a TEA definition, we recommend that the

1 effectiveness be tested by following the same approach that
2 I outlined above for Congress to consider.

3 Visa reserves. The last discussion draft proposed to
4 reduce the spread to \$200,000 for the minimum investment
5 amount between TEA and non-TEA projects. Since the
6 immigrant's sole reason to invest is to secure the visa, a
7 visa reserve that moves the investor towards the front of
8 the visa line for investing in certain project types or
9 locations may become more important than investing \$200,000
10 less in a loan. This becomes especially important as the ~~is~~
11 ~~a~~ waiting period exceeds 6 years for Chinese investors. X

12 Finally, the visa reserves should be carefully X
13 coordinated with the TEA rules to make sure that the
14 reserves do not undermine the TEA incentives and that they
15 work in tandem.

16 Thank you.

17 [The prepared statement of Mr. Friedland follows:]

1 Mr. Friedland. Thank you. I assume the industry has
2 determined whether large projects would qualify under that
3 method, and if large projects would qualify, then I would
4 question whether that is an appropriate test because
5 essentially you will end up with the same result that we
6 have today, which is a single investment level, but just
7 changing the name. And I think what is happening with the
8 commuter traffic pattern as a test is some are confusing the
9 purpose of EB-5 and the job creation component with the TEA
10 standard, which is intended as an added incentive reserved
11 for a limited number of projects or locations that are most
12 deserving that are unable to attract capital.

13 So, for example, we ^{created} ~~conducted~~ a database, which I X
14 referred to in my testimony, and there are at least--we
15 found at least 19 projects which are aiming to raise at
16 least \$200 million. That translates to 400 investors, at
17 least 400 investors, which translates again to at least
18 1,000 visa applications. One project of that size would use
19 up or absorb 10 percent of the annual quota limitation.
20 This is at a time when there are record visa waiting lines
21 that everyone is complaining about, so I am not sure what
22 the justification would be to use this limited resource, the
23 TEA, and allocate it to large projects, which are the ones
24 that are most likely to utilize the commuter traffic pattern
25 approach.

1 are located. The biggest developers are there. They are
2 able to afford and have the equity necessary to build the
3 largest projects, and there are a number of instances where
4 the projects have been fully funded without EB-5 capital,
5 ~~and because~~ ^{yet the} USCIS rules permit ~~those~~ the jobs to be ~~XX~~
6 credited to the EB-5 capital. EB-5 capital could come in to ~~X~~
7 replace the capital, the other capital as well.

8 Senator Tillis. Which is what I was getting to. Mr.
9 Whipple, I served in the State legislature before I came
10 here, and I know that you served in Iowa--or you were in
11 Iowa. The States have a lot of attention, particularly
12 those States that have large rural populations with
13 unemployment and poverty problems. We have a series of
14 layers and layers of economic incentives that are biased to
15 the rural areas already.

16 To what extent should some of our attention be to
17 better engage the States in terms of collectively making it
18 more--or maybe if there is evidence that already supports
19 this, but making it more attractive for some people who may
20 be thinking about an urban center to move out into some of
21 the outer rings based on other things that they may be able
22 to pull together to make their projects work?

23 Mr. Whipple. I think it is important to engage the
24 States through State economic development agencies and
25 commerce departments to do an analysis of what is going to

1 the job creation requirement?

2 Mr. Friedland. I do not believe the statute addresses
3 how the jobs are to be counted. I believe that when the
4 program was underutilized, USCIS promulgated rules that
5 would stimulate and promote the program, and as a result,
6 they allowed 100 percent of the jobs to count even if EB-5
7 capital accounts for less than that. Back then, the program
8 was underutilized. Now that it is at a high capacity, that
9 might be ^{re-}examined. I think it is difficult to demonstrate X
10 whether or not the EB-5 capital is the driving force, As XX
11 Mr. Healy said, As far as EB-5 capital being the grease to
12 move the wheels, mezzanine financing, which is providing for
13 a portion of the capital to be allocated by EB-5, is a common X
14 technique in conventional real estate financing.

15 But as far as the jobs being counted, that is providing
16 a higher percentage than that provided by the EB-5 capital.
17 Nevertheless, that is what has caused the program to
18 prosper.

19 Chairman Grassley. Thank you.

20 Mr. Joseph, as you know, the bill that Senator Leahy
21 and I introduced last year--that was S. 1501--includes
22 extensive reforms designed to improve integrity. These
23 include expanded regional center reporting requirements,
24 background checks on regional center officials, and new
25 authority to deny petitions and regional center applications