

**Senate Committee on the Judiciary:**

*The Distortion of EB-5 Targeted Employment Areas: Time to End the Abuse*

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Time: 10:00 AM (EST)

**Location:** Dirksen Senate Office Building 226

**Presiding:** Chairman Grassley (R-IA)

**Written Testimony of**

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## **Biography**

My name is Timothy Whipple, J.D. I am a proud native Iowan. I grew up in rural Franklin County and graduated from Cedar Falls High School in 1995. I am a 1999 graduate of St. Olaf College in Northfield, MN and a 2007 graduate of Drake University Law School in Des Moines, IA.

I am currently the General Counsel for the Iowa Association of Municipal Utilities, a trade association representing more than 540 community-owned water, gas, electric, and communications utilities. From 2007 to 2011, I was Legal Counsel to the Iowa legislature for Economic Development and Tax law.

From June 2011 to November 2015, I was the General Counsel for the Iowa Economic Development Authority. In this capacity, one of my duties was to coordinate the state's effort to leverage the federal EB5 immigrant investor visa program.

## **A Brief History of the State of Iowa's Regional Center**

The state of Iowa, through its state Economic Development agency, has operated an EB5 regional center since approximately 2004. The administration of former governor Tom Vilsack, in cooperation with agricultural interests and with Iowa State University, initially established the regional center in order to facilitate the immigration of European dairy farmers to Iowa for purposes of setting up new dairy operations in the state. These early efforts saw some success. A few of these dairy farmers came to Iowa, created the requisite number of direct jobs, and received visas under the EB5 program.

Yet despite the modest success of these early efforts, it was clear that the initial design of the Iowa regional center was underutilizing the full potential of the EB5 program. Other areas of the country were financing much bigger and more internationally enticing developments through the program than Iowa was and they were more successful at using the program to attract foreign capital.

As interest in the immigrant investor visa program picked up nationally, members of the local business and economic development communities began to encourage the state to follow the lead of California, Texas, and New York in bringing foreign investment to Iowa. Debi Durham, the Director of the Iowa Economic Development Authority, and I took steps to expand the scope of our existing regional center.

## **Iowa's Goals in Expanding Its Regional Center**

The first reason we moved forward with an expanded regional center was that we felt the state government was better positioned than local communities to deal with the legal and financial complexities of EB5. Frequently, wealthy individuals from China or other countries would bring economic development projects directly to local community leaders, but such investors often

wanted to leverage the EB5 program so they could obtain visas after making the investments. It was not feasible or wise, in most cases, for Iowa communities to set up and operate a regional center that might do as few as one or two projects. Mistakes were likely to be made, and we did not wish to see projects fail or investors lose their visas.

Second, on its face, the EB5 program seems to offer opportunities for rural areas. For example, Iowa has 99 counties, and 77 of them qualify for the \$500,000 investment tier by virtue of their rural status. Most of these counties have been losing population for decades, and in 2015 an estimated 71 counties again saw their population decline.<sup>1</sup> It was our hope that with so much of the state eligible for the lower investment threshold, we could use EB5 to bring jobs and investment to the rural areas of the state.

Third, as the state's lead economic development agency, the Iowa Economic Development Authority has a host of grant, loan, and tax credit programs available for job creation projects and a steady stream of industrial prospects that take advantage of them. It was our hope that EB5 money could be deployed into such projects as part of the financing in those cases where more capital was required. In particular, given the state's backlog of infrastructure projects and its heavy concentration of value-added agriculture, advanced manufacturing, and bioscience businesses, we had hoped to use EB5 to help finance large-scale industrial developments and infrastructure projects. Iowa needs new investments in road, rail, and bridge infrastructure and in manufacturing if it is to see sustainable long-term growth.

Fourth, we felt that as a state agency whose primary mission is to benefit Iowans through economic development, we had the right incentive to operate a regional center. As a government agency, we were not focused on operating the center for profit and could make financing decisions with the best interests of taxpayers and communities in mind.

Finally, we hoped that by operating the regional center at the state level and by also serving as the state's TEA designating agency, we could bring consistency and predictability to the use of EB5 within the state.

### **Issues and Challenges of the Current EB5 Program**

As a former state official who spent a number of years trying to make EB5 work for Iowa, I believe there are a few reasons why the deck is stacked against smaller, rural states.

First, the gerrymandering of census tracts to create targeted employment areas (TEAs) means \$500,000 investment opportunities can be created virtually anywhere. With ample opportunity to invest in projects located in the prosperous urban areas of California, Texas, Florida, and New York, investors don't bother to look for projects in rural areas. Moreover, Iowa simply doesn't

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<sup>1</sup> [http://www.nwestiowa.com/news/state-releases-county-population-data/article\\_d97b9a78-fdcb-11e5-9f35-3bedf65ac2f6.html](http://www.nwestiowa.com/news/state-releases-county-population-data/article_d97b9a78-fdcb-11e5-9f35-3bedf65ac2f6.html)

see many projects on the same scale as the larger urban areas, and it is easier for international promoters to market a few mega-developments than many smaller size projects.

Second, because of the natural political and economic incentives of state officials, state-level TEA designation, without clear national standards, almost guarantees that TEA gerrymandering will continue. From a cost-benefit standpoint, approving a TEA means economic growth and political goodwill for a state agency whereas denying a TEA only brings criticism and potential political blowback. Politicians and community leaders want these projects to happen, and they don't want state bureaucrats getting in the way.

Third, rural economies are smaller and less diverse than the economies of large coastal states. Most of Iowa's big recent developments have been industrial and manufacturing facilities financed with internal corporate capital rather than the luxury hotel, casino, and tourism projects that tend to attract EB5 investment. Wealthy foreign investors seem to prefer the prestige associated with high-end commercial real estate development more than a value-added agriculture or advanced manufacturing project.

Fourth, the ability to leverage indirect job creation under the program favors affluent urban areas. Most indirect job creation is calculated using economic analysis tools that incorporate multiplier effects. All other things being equal, a project built in a larger urban area with a more diversified economy will see a better multiplier effect and thus a better job creation number for purposes of EB5.<sup>2</sup> This makes it less efficient, from a business standpoint, to invest in smaller projects in rural areas.

Finally, a TEA designation should be an indicator of economic distress. The current focus on unemployment as the exclusive basis for TEA designation fails to recognize other indicators of distress such as low wages and high poverty rates. Much of rural Iowa, for example, has an unemployment rate below the national average, and some counties are below 3%.<sup>3</sup> Yet these areas do face economic challenges. Rural Iowa has been depopulating for a century and this trend shows no sign of abating. As people leave in search of opportunity, the availability of skilled workforce becomes the top priority of local businesses and a limiting factor for recruiting a new industrial prospect. When good, well-paying jobs leave for areas with more workforce, the jobs that are left tend to be low-paying service sector jobs or part-time work.

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<sup>2</sup> <https://msu.edu/course/prr/840/econimpact/multipliers.htm>

<sup>3</sup> <https://www.iowaworkforcedevelopment.gov/labor-market-information-division>

## **Congress Should Make EB5 More Fair**

The current implementation of EB5 simply is not working for rural areas of the Midwest and something needs to change. Listed below are some common sense things that would make EB5 work better for rural areas:

- Reserve a minimum of 20% of the annual available visas for investors who make investments in rural areas.
- Stop the gerrymandering of TEAs.
- Use additional economic distress criteria for purposes of TEA designation.
- Require each individual census tract in a TEA to meet the criteria.
- Incentivize projects built in true distressed areas, rural and urban, that represent underserved capital markets.
- Create and enforce a consistent set of national TEA standards.
- Create incentives for infrastructure and manufacturing projects rather than commercial real estate development.

## **Conclusion**

In conclusion, I would like to thank Senator Grassley and the members of the Judiciary Committee for the opportunity to testify today. Immigration and economic development are critical issues facing our country, and improving the EB5 program is an important step in addressing these issues.