

EB 5 Program Reauthorization History

A comprehensive guide from EB5 Attorneys

The EB 5 investor visa program has been reauthorized, extended, reformed, and allowed to lapse multiple times since Congress created it in 1990. The program's legislative history directly affects investor confidence, project development, and the pace of USCIS adjudication. Understanding how Congress has handled the program over three decades helps investors evaluate the risk of future lapses and make informed filing decisions, particularly with the current authorization set to expire on September 30, 2026.

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Creation of the EB 5 Program: IMMACT90

Congress created the EB 5 immigrant investor visa through the Immigration Act of 1990 (IMMACT90, P.L. 101 649). Section 121 of IMMACT90 added a new fifth preference category to the employment based immigration system under INA section 203(b)(5), authorizing up to 10,000 immigrant visas annually for foreign nationals who invest a qualifying amount of capital in a U.S. commercial enterprise that creates at least 10 full time jobs for U.S. workers.

The original statute set the standard investment at \$1,000,000 and the TEA investment at \$500,000. These thresholds remained unchanged for over 30 years until the 2022 reforms.

IMMACT90 established the core framework that still governs the EB 5 program: a capital investment placed at risk in a new commercial enterprise, job creation as the economic justification for the immigration benefit, and reduced investment thresholds for projects in areas of high unemployment or rural locations. The program was designed to attract foreign capital to stimulate the U.S. economy while providing an immigration pathway for investors and their families.

The EB 5 direct investment pathway created by IMMACT90 is permanent. It does not require periodic reauthorization. The regional center component, added later, is the portion that requires congressional renewal.

The Regional Center Pilot Program (1993)

Congress created the EB 5 regional center pilot program in 1993 through Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act (P.L. 102 395). The pilot program introduced a critical innovation: investors in USCIS designated regional centers could satisfy the job creation requirement through indirect and induced jobs, not just direct hires.

This change was transformative. Under the direct investment pathway, each investor must demonstrate that their specific investment created 10 direct W 2 positions. Under the regional center model, job creation is measured through an economic impact methodology (typically the RIMS II or IMPLAN model) that counts indirect jobs (positions created in the supply chain) and induced jobs (positions created by household spending of direct and indirect workers). This methodology allows larger, pooled investment projects such as real estate developments, hospitality projects, and infrastructure to generate sufficient job counts for multiple investors.

The pilot program was designed as a temporary initiative requiring periodic reauthorization. Congress intended to evaluate whether the regional center model effectively channeled investment to economically distressed areas before making it permanent. Three decades later, the program remains temporary. Over 90% of all EB 5 investors file through regional centers, making the sunset provision a recurring source of uncertainty.

Extensions Through Continuing Resolutions (1998 to 2015)

From the late 1990s through 2015, Congress routinely extended the regional center program through short term continuing resolutions and omnibus appropriations bills. These extensions typically lasted one to three years and were attached to larger spending packages rather than enacted as standalone legislation.

During this period, the EB 5 program grew substantially. The number of I 526 petitions filed annually increased from a few hundred in the early 2000s to over 14,000 by 2015. Regional center designations multiplied, and the program attracted billions of dollars in foreign investment to U.S. projects.

Despite the growth, Congress made no significant reforms to the program during this period. The investment thresholds (\$500,000 TEA, \$1,000,000 standard) remained at their 1990 levels. Oversight mechanisms were minimal. Several high profile fraud cases involving regional center promoters who diverted investor funds raised concerns about program integrity, but legislative action was slow.

The routine nature of these extensions created a pattern: Congress would extend the program at the last minute, often as part of a must pass spending bill, without substantive changes. This pattern gave the EB 5 industry and investors a sense of relative (if not absolute) security that reauthorization would continue.

The 2015 Near Lapse and Reform Efforts

The regional center program's authorization expired briefly on September 30, 2015, before Congress extended it as part of a continuing resolution in early October. This near lapse was the first serious signal that reauthorization was no longer automatic.

Senator Chuck Grassley and Senator Patrick Leahy had introduced reform legislation (S. 1501, the "American Job Creation and Investment Promotion Reform Act") in 2015, proposing substantial changes including higher investment thresholds, stricter TEA definitions, and enhanced oversight. The reform effort did not advance as standalone legislation, but it set the terms for the policy debate that would continue through 2022.

Between 2015 and 2018, Congress extended the program through a series of short term continuing resolutions, each lasting only a few months. The EB 5 industry and investors experienced repeated uncertainty as each extension deadline approached. Reform proposals were introduced in both the House and Senate, but disagreements between industry stakeholders, reform advocates, and the administration prevented consensus.

During this period, the Department of Homeland Security under the Obama administration proposed regulatory changes to raise investment thresholds and reform TEA definitions. These proposed regulations were finalized in 2019 under the Trump administration, raising the standard investment to \$1,800,000 and the TEA investment to \$900,000. However, a federal court later vacated these regulations on procedural grounds, reverting the thresholds to \$500,000 and \$1,000,000 until the RIA set new statutory amounts in 2022.

The 2018 Government Shutdown Lapse

The regional center program lapsed from December 21, 2018, through February 15, 2019, during a broader federal government shutdown. During this 56 day period, USCIS (which is self funded through fees and was not shut down entirely) continued to process pending regional center petitions but could not accept new filings.

The 2018 lapse was relatively contained because it coincided with the government shutdown, and the program was restored as part of the spending deal that ended the shutdown. However, the lapse had real consequences. Investors who were ready to file during that period had to wait. Regional center projects that planned capital raises around year end schedules experienced disruption. The uncertainty reinforced industry calls for longer term reauthorization.

Between February 2019 and June 2021, Congress continued the pattern of short term extensions, attaching EB 5 reauthorization to continuing resolutions and appropriations bills. Multiple reform proposals were introduced but none advanced. The perpetual state of near expiration became a defining feature of the program.

The 2021 Lapse: Nine Months Without a Program

The most consequential lapse in the program's history began on June 30, 2021, when the regional center authorization expired and Congress failed to extend it. Unlike previous lapses measured in days or weeks, this gap lasted approximately nine months, from July 1, 2021, through March 15, 2022, when the EB 5 Reform and Integrity Act was enacted.

The 2021 lapse had severe consequences. USCIS froze all processing of pending regional center I 526 petitions. Investors who had filed petitions months or years earlier saw their cases go dormant. No new regional center petitions could be accepted. Regional centers could not accept new investors. Projects under construction that relied on continued EB 5 capital raises faced financing gaps.

Tens of thousands of investors were affected. Many had invested hundreds of thousands of dollars and waited years for adjudication, only to have their cases frozen with no guaranteed resumption date. The economic impact extended to project developers, construction workers, and the communities where EB 5 funded projects were under development.

The 2021 lapse demonstrated that congressional reauthorization is not guaranteed and that lapses can last for extended periods. It provided the political impetus for the comprehensive reform that became the RIA, as both industry stakeholders and reform advocates recognized that the status quo of perpetual short term extensions was unsustainable.

The EB 5 Reform and Integrity Act of 2022

The EB 5 Reform and Integrity Act (RIA) was enacted on March 15, 2022, as part of the Consolidated Appropriations Act of 2022 (P.L. 117 103, Division BB). The RIA represented the most substantial reform of the EB 5 program since its creation in 1990.

Key provisions of the RIA include the following.

New investment thresholds: \$800,000 for TEA projects, \$1,050,000 for non TEA projects, with inflation adjustment authority every five years.

Visa set asides: 20% of annual EB 5 visas reserved for rural TEA investors, 10% for high unemployment TEA investors, 2% for infrastructure projects. The remaining 68% are unreserved.

Integrity measures: The RIA established the EB 5 Integrity Fund (\$1,000 per investor), required annual audits of regional centers, imposed personal liability on regional center principals for misrepresentation, and created new USCIS authority to terminate regional center designations for compliance failures.

USCIS TEA determination authority: The RIA transferred TEA designation authority from states to USCIS, standardizing the process.

Grandfathering provision: Investors who file I 526E petitions before the program's next expiration are protected from future lapses.

Concurrent filing: Investors with immediately available visa numbers may file I 526E and I 485 simultaneously, gaining access to work authorization and travel documents while the petition is pending.

The RIA authorized the regional center program through September 30, 2027, but a technical correction subsequently adjusted the expiration date to September 30, 2026. As of April 2026, no legislation extending authorization beyond that date has been enacted.

What Investors Should Know About Legislative Risk

The EB 5 program's legislative history reveals a pattern: Congress supports the program in principle but struggles to act on reauthorization in a timely manner. Every lapse has eventually been resolved, but the timing and terms of resolution are unpredictable.

For investors evaluating the EB 5 program in 2026, several considerations are relevant.

The grandfathering provision in the RIA is the most protective mechanism available. Investors who file before September 30, 2026, are insulated from the consequences of a future lapse. This provision did not exist before 2022, meaning current investors have stronger protections than investors affected by the 2021 lapse.

Congressional dynamics around reauthorization are uncertain. Bipartisan support for the EB 5 program exists, but disagreements over reform scope, investment thresholds, visa allocation, and oversight mechanisms have historically delayed action. Investors should not plan around a specific reauthorization timeline.

The direct investment pathway is permanent and not subject to program sunset. Investors who prefer to eliminate legislative risk entirely can pursue direct EB 5 investment, though this pathway carries different operational and visa availability trade offs.

The EB 5 industry has become more organized in advocating for reauthorization. Trade groups such as Invest in the USA (IIUSA) actively lobby Congress and coordinate with stakeholders. Industry engagement does not guarantee timely action but does ensure that reauthorization remains on the legislative agenda.

The most prudent approach for any investor considering EB 5 in 2026 is to file the I 526E petition before the September 30 deadline and secure grandfathering protection. This approach provides downside protection regardless of what Congress does, while preserving all upside benefits if the program is reauthorized and expanded.

Frequently Asked Questions

1. When was the EB 5 program created?

Congress created the EB 5 investor visa through the Immigration Act of 1990 (IMMACT90, P.L. 101 649). The statute added INA section 203(b)(5), authorizing up to 10,000 immigrant visas annually for foreign nationals who invest qualifying capital in a U.S. commercial enterprise that creates at least 10 full time jobs. The regional center component was added separately in 1993 (P.L. 102 395).

2. How many times has the EB 5 regional center program lapsed?

The program has lapsed several times. The most significant lapses occurred in 2018 (56 days during the government shutdown) and 2021 (approximately nine months, from July 1, 2021, through March 15, 2022). A brief lapse also occurred in September 2015. Each lapse disrupted investor cases and project development before Congress eventually reauthorized the program.

3. What is the EB 5 Reform and Integrity Act of 2022?

The RIA (P.L. 117 103, Division BB) was enacted on March 15, 2022, as part of the Consolidated Appropriations Act. It raised investment thresholds to \$800,000 (TEA) and \$1,050,000 (non TEA), created visa set asides for rural (20%), high unemployment (10%), and infrastructure (2%) projects, established the EB 5 Integrity Fund, transferred TEA designation to USCIS, and included a grandfathering provision for investors who file before the program's next sunset.

4. What were the original EB 5 investment amounts?

IMMACT90 set the standard investment at \$1,000,000 and the TEA investment at \$500,000. These amounts remained in effect from 1990 until the RIA raised them to \$1,050,000 and \$800,000 in March 2022. A 2019 regulatory attempt to raise thresholds to \$1,800,000 and \$900,000 was later vacated by a federal court.

5. Will Congress reauthorize the program before September 2026?

As of April 2026, no legislation extending the program beyond September 30, 2026, has been enacted. Bipartisan support for the program exists, but legislative timelines are unpredictable. Investors should not rely on timely reauthorization and should instead file I 526E petitions before the deadline to secure grandfathering protection.

6. Does the direct investment pathway expire?

No. The direct investment EB 5 pathway (INA section 203(b)(5)) was created permanently by IMMACT90 in 1990 and does not require reauthorization. Only the regional center program, added as a pilot in 1993, requires periodic congressional renewal. Direct investors file Form I 526 (not I 526E) and must demonstrate 10 direct W 2 hires rather than indirect or induced jobs.

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