

# EB 5 Sunset Sept 2026: Grandfathering

A comprehensive guide from EB5 Attorneys

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The EB 5 regional center program is authorized through September 30, 2026, under the EB 5 Reform and Integrity Act of 2022 (P.L. 117 103, Section 106). If Congress does not reauthorize the program before that date, regional center operations will lapse. Investors who file I 526E petitions before the expiration date are grandfathered: their petitions remain eligible for adjudication even if the program lapses. Filing before the deadline is the single most important step an investor considering a regional center project can take in 2026.

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## What September 30, 2026 Means for the EB 5 Program

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The EB 5 regional center program operates under a statutory authorization that expires periodically. Congress must affirmatively reauthorize the program before each expiration date or the program lapses. The current authorization, enacted through the EB 5 Reform and Integrity Act (RIA) within the Consolidated Appropriations Act of 2022 (P.L. 117 103), expires on September 30, 2026.

If Congress does not pass legislation extending or reauthorizing the regional center program before that date, USCIS will stop accepting new I 526E petitions for regional center investments. Regional centers will lose their authorized status, and the 20%/10%/2% visa set aside categories created by the RIA will cease to exist for new filings.

The direct investment pathway (I 526, non regional center) is permanent and does not expire. However, the vast majority of EB 5 investors (over 90% historically) file through regional centers, making the sunset date relevant to most prospective investors.

This is not the first time the regional center program has faced expiration. The program has lapsed multiple times in its history, most recently in 2021 and in 2018. Each prior lapse caused significant disruption to investors and the EB 5 industry before Congress eventually reauthorized the program.

## What Grandfathering Means Under the RIA

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Section 106(b) of the RIA includes a grandfathering provision that protects investors who file I 526E petitions before the program's expiration. Grandfathering means that if you file your I 526E petition while the regional center program is authorized (i.e., on or before September 30, 2026), your petition will remain eligible for adjudication by USCIS even if the program subsequently lapses.

The grandfathering protection extends through the entire lifecycle of the investor's case: I 526E adjudication, visa processing or adjustment of status, the two year conditional period, and I 829 adjudication. An investor who files I 526E on September 15, 2026, and whose case takes five years to complete through I 829, is grandfathered for the full duration of the case.

The critical date is the filing date of the I 526E petition, not the approval date. USCIS uses the receipt date (the date USCIS accepts the petition for processing) as the filing date. Investors should account for mail transit time and USCIS intake processing when planning their filing timeline. Filing on September 30 itself carries risk because a petition that arrives at USCIS on October 1 or later would not be grandfathered if the program lapses.

Grandfathering does not protect investors who have not yet filed. An investor who signs a subscription agreement and wires investment capital to a regional center project but has not filed the I 526E petition is not grandfathered. The statute requires that the petition be filed, not merely that the investment be made.

## What Happens to Pending Petitions if the Program Lapses

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If the regional center program expires on September 30, 2026, without reauthorization, the following consequences apply.

**Grandfathered petitions (I 526E filed before expiration):** These continue to be processed by USCIS. The investor's case proceeds through adjudication, visa processing, conditional residence, and I 829 as if the program had not lapsed. USCIS has confirmed this interpretation based on the RIA's grandfathering provision.

**New petitions after expiration:** USCIS will not accept new I 526E petitions for regional center investments after the program lapses. Investors who have not yet filed would need to either wait for Congress to reauthorize the program (with no guaranteed timeline) or restructure their investment as a direct investment under the permanent I 526 pathway.

**Regional center operations:** During a lapse, regional centers lose their USCIS designation. They cannot accept new investors or sponsor new projects for EB 5 purposes. However, the underlying business operations of existing projects continue, and existing investors' grandfathered petitions are unaffected.

**Visa set asides:** The rural (20%), high unemployment (10%), and infrastructure (2%) set aside categories are creatures of the RIA. If the RIA's regional center provisions expire, these set asides would no longer apply to new filings. Grandfathered investors would retain their set aside classification.

The 2021 lapse provides a precedent. When the regional center program lapsed on June 30, 2021, USCIS stopped processing pending regional center I 526 petitions for approximately nine months until the RIA was enacted in March 2022. The RIA retroactively restored processing for those petitions. A future lapse could follow a similar pattern, but there is no guarantee that Congress would act quickly or retroactively.

## Legislative History of Prior Sunsets

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The EB 5 regional center program has been extended or reauthorized numerous times since its creation. Understanding this history provides context for assessing the likelihood and implications of the September 2026 sunset.

The regional center pilot program was first created by Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1993 (P.L. 102 395). It was originally intended as a temporary program.

From 1993 through 2022, Congress extended the program repeatedly through continuing resolutions, omnibus appropriations bills, and standalone legislation. In most cases, Congress extended the program for one to three years at a time without substantial reforms.

The program lapsed briefly in September 2015 but was reauthorized within days. A more significant lapse occurred from December 21, 2018, through February 15, 2019, during a broader federal government shutdown. During this period, USCIS continued to process pending petitions but could not accept new filings.

The most consequential lapse occurred from June 30, 2021, through March 15, 2022. During this approximately nine month gap, USCIS halted all processing of regional center I 526 petitions. Tens of thousands of investors had their cases frozen. When the RIA was enacted in March 2022, it retroactively restored the program, reinstated processing of pending petitions, and included the grandfathering provision to prevent future freezes for timely filers.

The 2021 lapse demonstrated the real costs of program expiration: frozen cases, investor uncertainty, halted project development, and approximately nine months of lost processing time for every affected investor.

## Why Filing Before September 30, 2026 Matters

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The grandfathering provision creates a hard deadline for regional center investors. Filing the I 526E petition before September 30, 2026, provides the following protections.

**Case continuity:** Your petition will be processed regardless of whether Congress reauthorizes the program. You will not experience the processing freeze that affected investors during the 2021 lapse.

**Visa set aside access:** If you file under a rural, high unemployment, or infrastructure TEA project before the sunset, your set aside classification is preserved. This is particularly valuable for investors from China, India, and Vietnam who benefit from the separate visa queues.

**Priority date preservation:** Your priority date is established on the date your I 526E is filed. This date determines your place in the visa queue. Investors who delay filing and then must wait for reauthorization lose months or years of queue position.

**Investment certainty:** Investors who have committed capital to a regional center project but have not filed their petition face the risk that their project may not be able to sponsor new EB 5 investors during a lapse. Filing secures the immigration nexus between the investor and the project.

The practical implications for investors considering EB 5 in 2026: there is no benefit to waiting. If you intend to pursue a regional center EB 5 investment, file before September 30, 2026. Delay beyond that date creates legislative risk that you cannot control and that may cost years of processing time.

## What Investors Should Do Now

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Investors who are considering an EB 5 investment through a regional center should accelerate their timeline in light of the September 2026 deadline. The following steps should be taken promptly.

Engage EB 5 counsel immediately. Source of funds documentation, project due diligence, and I 526E preparation take two to four months for most investors. Starting in late 2026 leaves insufficient time to file before the deadline.

Select a project and complete due diligence. Review the regional center's track record, the project's TEA designation, the economic impact analysis, and the offering documents. Do not rush due diligence, but do not delay it either.

Begin source of funds documentation now. Gather bank statements, tax returns, business records, property records, and any other documentation tracing the origin and path of your investment capital. This is typically the most time consuming step in the pre filing process.

Set a target filing date of August 2026 or earlier. Building in a one to two month buffer before the September 30 deadline accounts for unexpected documentation delays, attorney review cycles, and USCIS intake processing time.

Do not rely on Congress acting before the deadline. While reauthorization is possible and has historically occurred, the timing and terms are unpredictable. Grandfathering by filing before the sunset eliminates your exposure to legislative uncertainty.

## Congressional Outlook for Reauthorization

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As of April 2026, Congress has not enacted legislation reauthorizing the EB 5 regional center program beyond September 30, 2026. Several factors inform the outlook.

Bipartisan support for EB 5 has historically been strong. The program generates foreign investment in U.S. projects and creates jobs without direct cost to taxpayers. Members of both parties have supported reauthorization in the past, often attaching it to larger spending bills or continuing resolutions.

However, the EB 5 program has also attracted legislative controversy. Concerns about fraud, project failures, and the concentration of investment in certain geographic areas have led to calls for additional reforms. Some legislators have proposed changes to investment thresholds, oversight mechanisms, or visa allocation. Disagreements over the scope of reforms have delayed reauthorization in the past.

The RIA itself was the product of years of negotiation. It took from 2017 (when serious reform discussions began) until March 2022 to enact. Investors should not assume that reauthorization will happen quickly or automatically.

The safest strategy for any investor is to file the I 526E before the sunset date and let the grandfathering provision provide protection. If Congress reauthorizes the program, the investor benefits from continued program operations. If Congress does not, the investor's case is still protected.

## Direct Investment as an Alternative

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The direct investment EB 5 pathway (Form I 526, non regional center) is permanent and does not expire. Investors who cannot file before the September 2026 deadline or who prefer not to rely on the grandfathering provision may consider structuring their EB 5 investment as a direct investment.

Direct investment requires the investor to establish or purchase a new commercial enterprise and demonstrate the creation of 10 full time W 2 positions through direct hiring. The minimum investment is the same: \$800,000 for TEA projects, \$1,050,000 for non TEA. However, direct investment carries a higher management burden and requires hands on operational involvement.

Direct investors do not benefit from the visa set aside categories (rural 20%, high unemployment 10%, infrastructure 2%), because those set asides are tied to the regional center program under the RIA. Direct investment petitions fall into the unreserved EB 5 category and are subject to per country limits.

For investors from non backlogged countries who are comfortable operating a U.S. business, direct investment provides an alternative that is immune to program sunset risk. For investors from backlogged countries who rely on set aside visa availability, the loss of set aside access makes direct investment less attractive.

# Frequently Asked Questions

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## 1. When does the EB 5 regional center program expire?

The current authorization expires on September 30, 2026, under the EB 5 Reform and Integrity Act of 2022 (P.L. 117 103, Section 106). If Congress does not reauthorize the program before that date, USCIS will stop accepting new regional center I 526E petitions.

## 2. What does grandfathering mean for EB 5 investors?

Grandfathering means that investors who file I 526E petitions before the program's expiration date (September 30, 2026) retain eligibility for adjudication even if the program lapses. The protection covers the entire case lifecycle: I 526E adjudication, visa processing, conditional residence, and I 829. The critical date is the USCIS receipt date of the I 526E petition.

## 3. Has the EB 5 program lapsed before?

Yes. The regional center program has lapsed multiple times, most significantly from June 30, 2021, through March 15, 2022, when USCIS froze all regional center I 526 petition processing for approximately nine months. Shorter lapses occurred in 2018 (during the government shutdown) and briefly in 2015. Each lapse caused disruption to investors and the EB 5 industry.

## 4. What happens to my investment if the program lapses and I have not filed?

If you have invested in a regional center project but have not filed your I 526E petition before the sunset date, you are not grandfathered. USCIS will not accept new regional center petitions during a lapse. Your investment remains in the project per the terms of your subscription agreement, but you cannot obtain immigration benefits through that investment until Congress reauthorizes the program. The wait could be months, years, or indefinite.

## 5. Can I switch to direct investment if the regional center program expires?

You can pursue a separate direct investment, but you cannot simply reclassify a regional center investment as a direct investment. Direct investment requires a different business structure (the investor must directly own and manage the enterprise) and different job creation documentation (W 2 employees rather than indirect/induced jobs). A new I 526 petition would be required. Consult with your attorney about whether this option makes sense for your situation.

## 6. Should I wait for reauthorization or file now?

File before the September 30, 2026 deadline if at all possible. Grandfathering eliminates your exposure to legislative risk. If Congress reauthorizes the program, your case proceeds normally. If Congress does not, your case is still protected. There is no strategic advantage to waiting, and significant downside risk.

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