

# June 30, 2021 - EB-5 Regional Center Program Reauthorization FAQs

## 1. What is the June 30, 2021 deadline for EB-5 Regional Center program reauthorization?

The EB-5 Regional Center program has only ever been a temporary program and is subject to periodic reauthorization by the US Congress. Typically, reauthorization has been included in the government's omnibus spending bill, and hence the program has been 'automatically' reauthorized each time a spending bill is passed. In October 2020, the program was decoupled from the spending bill and given an expiry date of June 30, 2021. Unless it is reauthorized by this date, the Regional Center program will expire.

## 2. What will happen if the EB-5 Regional Center program expires on June 30?

The EB-5 Regional Center program will cease to exist. This could be a temporary lapse, until further legislation is passed, or it could be permanent.

If it lapses, your immigration process will stop, irrespective of where you are in that journey, unless you have already secured the Conditional Green Card. If you are at any of the following stages, you will be unable to proceed to the next step:

- Your I-526 is waiting for approval
- Your I-526 is approved and you are waiting for the petition to be sent to NVC
- You are filing documents with the NVC
- You are Documentarily Qualified by NVC and are waiting for a consular interview
- You have obtained a visa, but have not made an entry into the USA to get the Conditional Green Card
- Your I-526 is approved and you are preparing to file the I-485 for adjustment of status
- You have filed I-485 for adjustment of status, but have not been receipted
- You have been receipted for I-485 and are waiting for the biometric appointment.

(See the questions below for more details.)

## 3. What is being done to ensure reauthorization?

An EB-5 Reform Bill has been introduced in the House and Senate to reauthorize the program for five years, together with investor protection measures and other reforms. However, it is not clear that there will be sufficient time in the Congressional timetable for committees to debate, amend and rewrite the proposed legislation, or the political will, to secure a long-term EB-5 regional center program extension before June 30, 2021.

An alternative effort to continue the program with temporary reauthorizations (as has been the practice in the past) might be successful, although there is no indication of any such legislation being introduced as of now.

**4. I am a Direct EB-5 investor. Does this expiry affect me?**

No. Your application will not be affected if the regional center program expires.

**5. I am an EB-5 Regional Center investor with a pending I-526. How will the expiry of the EB-5 Regional Center program affect me?**

The most likely scenario is that your application would be held in abeyance pending reauthorization. That is what the USCIS has done in the past, whenever the program lapsed temporarily for a few weeks. But if the reauthorization is never achieved, USCIS might adjudicate your petition only on direct job creation. Virtually no regional center project creates direct jobs. Therefore, one could expect widespread denials if USCIS were to take such a course of action.

**6. I am an EB-5 Regional Center investor with an approved I-526 and am awaiting consular processing. How will this affect me?**

The visa bulletin would show 'U' meaning EB-5 Regional Center visas are unavailable. You cannot proceed with the consular interview, obtain the visa or get a Conditional Green Card until the program is reauthorized.

**7. I am an EB-5 Regional Center investor with an approved I-526 and I am awaiting adjustment of status. How will this affect me?**

Adjustment of Status applicants would be in the same position as anyone with a pending I-526 or someone waiting for consular processing. Your application could potentially be held in abeyance pending reauthorization. If the program is never reauthorized, your application might be denied as the program no longer has legislative authority. Even a short term lapse would cause a delay in this process.

**8. If there is a temporary lapse in the program, even for a few months, what would the effect be on USCIS processing times?**

Should the program lapse, staff at IPO (Investor Program Office) will be reduced to skeleton levels and the rest will be redeployed or furloughed, leading to further delays if the program resumes later. The last time that the program was allowed to lapse, during the US government shutdown of 2018-2019, productivity at IPO dropped from a total of 15,122 processed I-526 applications in FY2018 to 4,673 in FY2019. Given that USCIS is currently processing at a rate of 375 applications per month (USCIS data, FY2021 Q1), a similar drop in productivity would be catastrophic for investors.

It will also lead to wastage of visas, as the number of visas issued will fall short of the sanctioned number.

A temporary lapse will therefore lead to a delay in your achieving the Green Card by several months or even years, leading to a delay in when you can receive your investment back and perhaps necessitating reinvestment of your capital.

**9. EB-5 seems to lurch from crisis to crisis. Isn't this just another of those scare stories that sort themselves out at the last minute?**

Possibly. But do you really want to take the risk when it is your dream of immigrating to the US that is at stake? The upcoming expiry carries a higher risk than past expiries because this one has been separated from the government's spending bills. IIUSA (the industry body of Regional Centers), many attorneys and other stakeholders have recognized this as well.

**10. Isn't this going to be just another temporary lapse, followed by reauthorization?**

If the program lapses this time, it might not be reauthorized at least until Sept 30 when the next financial year starts. But reauthorization at that point could depend on whether it can be attached to the next omnibus bill. Given that the EB-5 Regional Center program expiry has once been delinked from the government's spending bill, the uncertainty is higher this time.

**11. What will happen to my investment? How will this affect repayment of my capital?**

It is important to remember that the immigration and investment processes are completely separate. When you sign the agreement with your Investment Issuer or Regional Center, you agree to their terms and conditions for the investment, including the terms for the return of capital.

Every PPM is written differently and you should speak to your Issuer/Broker Dealer/Agent for further clarification to understand this scenario for your specific investment. For many investors, if the program lapses temporarily, you will likely receive conditional residency later than expected, thereby lengthening the required time that your investment must remain with the New Commercial Enterprise (NCE - the partnership in which you invested). USCIS deems you eligible to receive your money back only after you have finished the two years of your Conditional Green Card. As you wait to complete the two-year sustainment period, your NCE could be repaid, but since you would not have finished the immigration process, your money would then have to be redeployed or 'reinvested' into another EB-5 project. This could be potentially problematic as it would be completely up to your Investment Issuer or Regional Center to decide where your money will be reinvested, with what kind of risk, and how long this new investment horizon would be.

If the program is completely cancelled, your investment timeline may remain unchanged. You should be able to get your capital back once the investment term is completed and the NCE is repaid.

For more context on investment repayment, check out this video from the 28-minute timestamp: <https://www.youtube.com/watch?v=FIVzQJdif60&t=1731s>

**12. What can I do to influence things?**

- a) A group of EB-5 investors have started a Washington DC-based nonprofit organization to represent and advocate on behalf EB-5 investors and their interests. The organization is in the process of contacting and communicating with Congressional representatives. What would make the most impact is individual

investors speaking directly to House and Senate members (not just their staffers) and telling them their personal story. Members of Congress continue to have the perception that EB-5 is a “cash for visa” scheme for wealthy Chinese with no ties to the U.S. and is plagued by fraud and national security concerns and it is the goal of this organization to change this perception and protect all existing investors. If you are willing to help with these grassroots efforts and/or are open to speaking directly with members of Congress, please fill out this form:

<https://forms.gle/vMNnH99uyTnkMnPr8>

- b) Join the Telegram EB-5 Advocacy group here:  
<https://t.me/EB5Advocacy>
- c) Write, email, telephone or tweet your Senator or House Representative. Templates are available from the Telegram advocacy group.

If you are abroad, call or write to the Congressional representatives (Senators and House Representatives) where your project or Regional Center is located.

To find out your Senator’s contact details click here:

<https://www.senate.gov/senators/senators-contact.htm>

To find your House Representative, click here:

<https://www.house.gov/representatives/find-your-representative>

- d) Call or write to your Regional Center, asking them to support reauthorization efforts. Follow up with your broker dealer, agent and attorney as well. Warn them that not supporting reauthorization of the program would leave investors feeling angry and betrayed, which would discourage future investors from ever investing in the EB-5 program. Remind them that you have a voice and will inform other investors like yourselves of the perilous nature of the EB-5 program.
- e) If you have contacts in the media, educate them about this problem and ask them to write about this and highlight the adverse impact of a failure to re-authorize the program.
- f) Educate yourself about what is going on. A great source of unbiased, reliable information is Suzanne Lazicki’s blog (<https://blog.lucidtext.com/about/>).

#### **DISCLAIMER:**

This is not legal or financial advice. Please consult your immigration and securities attorneys before you derive your own conclusions.