



# EB-5 Immigrant Investor Program

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## EB-5 Immigrant Investor Program

Under the Immigration and Nationality Act (INA), there are five categories of employment-based (EB) visas in the permanent immigration system. Congress created the fifth category (EB-5), the immigrant investor visa, in 1990 (Immigration Act of 1990 [P.L. 101-649]) to benefit the U.S. economy through job creation and foreign capital investment. It provides lawful permanent resident (LPR) status to foreign nationals who invest capital in a new commercial enterprise (NCE) that creates jobs. Approximately 10,000 visas annually, 7.1% of all employment-based visas, are allotted to immigrant investors and their family members.

The minimum investment amount for the EB-5 category is \$1,050,000, or \$800,000 if the investment is in a *targeted employment area* (TEA)—a rural or high-unemployment area—or in an infrastructure project. The investment must create or preserve full-time employment for at least 10 U.S. citizens, U.S. nationals, LPRs, or other foreign nationals lawfully authorized to be employed in the United States.

The EB-5 visa grants investors, their spouses, and children (known as *derivatives*) conditional LPR status. After approximately two years, they must apply to remove the conditions on their LPR status. If the investor has met the program requirements (i.e., invested the required money and created the required jobs), they will receive full LPR status. If the investor has not met the requirements or does not apply to have the conditional LPR status removed, the investor's and their derivatives' conditional status is terminated, and, generally, they are required to leave the United States or will be placed in removal proceedings.

The EB-5 visa has two pathways, the standalone program and the Regional Center Program. Both may make use of TEAs for a reduced investment amount. In the standalone program, established under the 1990 legislation, foreign nationals invest in an enterprise that uses the capital for direct job creation (jobs held inside the NCE). The standalone program is permanently authorized. In 1992, Congress established the Regional Center Program as a pilot program. Regional centers are “any economic unit, public or private, which [are] involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.” The program allows investors to pool their investments in a regional center to fund a project in a specific geographic area and to count a certain proportion of *indirect* jobs (held outside the NCE) toward the job creation requirement. The Regional Center Program now accounts for most EB-5 investors’ participation (94% of individuals admitted to the United States under the EB-5 category from FY2018 through FY2022 invested in regional centers). However, unlike the standalone program, the Regional Center Program is not permanent and it requires regular reauthorization. In 2021, authorization for the program lapsed for nearly nine months.

Lawmakers had long called for various reforms to address concerns about EB-5, including the instability of the Regional Center Program, minimum investment amounts that had been unchanged since 1990, TEA gerrymandering, instances of fraud, and investor protections, among others. In 2019, DHS implemented a federal regulation that made some changes to the program; however, the rule was challenged in court and subsequently vacated by a federal district judge.

In March 2022, Congress passed the EB-5 Reform and Integrity Act of 2022 (RIA) within an omnibus funding package, enacting several program changes. The legislation codified the Regional Center Program in the INA and reauthorized it through FY2027. It set new investment thresholds; codified processes for TEA designations; established set-asides for visas for investments in rural areas, high-unemployment areas, and infrastructure projects; and implemented new fees and oversight measures.

After low levels of admissions under the EB-5 category during the COVID-19 pandemic in FY2020 (3,966) and FY2021 (2,635), admissions increased to 10,885 in FY2022. Nationals from a relatively small set of countries dominate participation in the EB-5 program. In FY2022, nationals from China, India, and Vietnam comprised more than three-quarters of EB-5 admissions, with China alone representing 56.3% of all admissions.

# Contents

Overview .....	1
EB-5 Investor Program Requirements.....	2
Investment of Capital .....	2
A New Commercial Enterprise (NCE).....	4
Job Creation .....	5
Regional Center Program .....	5
What is a Regional Center?.....	6
Regional Center Designation .....	7
The EB-5 Petition Process.....	8
I-526 Petition Trends.....	9
EB-5 Admissions .....	12
Economic Impact.....	14
Fraud and National Security Oversight within EB-5.....	15
EB-5 Immigrant Investor Program Modernization Regulation.....	16
EB-5 Reform and Integrity Act of 2022 (RIA).....	17
Regional Center Oversight Provisions .....	18

## Figures

Figure 1. Forms I-526 and I-526E Received and Pending with USCIS, FY2013-FY2022 .....	10
Figure 2. Form I-526 Filings by Country, FY2013-FY2022 .....	12
Figure 3. Immigrant Investor (EB-5) Admissions by Pathway, FY2003-FY2022 .....	13

## Tables

Table 1. FY2022 Admissions by Country .....	14
Table 2. Selected EB-5 Provisions Before and After the Reform and Integrity Act.....	17

## Contacts

Author Information.....	19
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## Overview

The EB-5 Immigrant Investor Program was established in the Immigration Act of 1990 (P.L. 101-649) to attract new foreign capital investment to the United States and generate employment.<sup>1</sup> EB-5 is the fifth of five permanent, employment-based (EB) visa preference categories that provide lawful permanent resident (LPR) status under the Immigration and Nationality Act (INA).<sup>2</sup> The Immigrant Investor Program Office (IPO) within the Department of Homeland Security's (DHS's) U.S. Citizenship and Immigration Services (USCIS) administers the program.

Unlike most EB categories,<sup>3</sup> EB-5 investors do not require an employer sponsor. Rather, EB-5 immigrants must invest a specified amount of capital in a new commercial enterprise (NCE) in the United States that creates or preserves at least 10 jobs. Investments in *targeted employment areas* (TEAs)—rural and high unemployment areas—as well as those in infrastructure projects, qualify for a lower investment amount.

Investors may choose from two pathways: the standalone (or standard) program and the Regional Center Program, which allows an investor to pool their investment with others to fund a project in a specific geographic area. While standalone investments must create or preserve *direct* jobs (those held within the NCE), regional center investors may count some *indirect* jobs (those held outside the NCE) toward the requirement. Both standalone and regional center investments may be made in TEAs to qualify for the lower investment amount (\$800,000). The Regional Center Program was established by Congress as a pilot program in 1992. It has become the primary pathway for EB-5 investors since 2008 and now accounts for most EB-5 investments (see **Figure 3**). Nevertheless, unlike the standalone EB-5 provision, which does not expire, the Regional Center Program must be regularly reauthorized. In 2021, the program's authorization lapsed for nearly nine months, during which time only the standalone option was available.

USCIS initially grants those admitted under the EB-5 category conditional permanent resident status for two years.<sup>4</sup> Subsequently, investors and their derivatives must apply to remove the conditions on their status. If they have met the visa requirements (i.e., invested and sustained the required money and created the required jobs), they receive full LPR status. If a foreign national investor has not met the requirements or does not apply to have the conditional status removed, his or her conditional LPR status is terminated, and, generally, the foreign national is required to leave the United States or will be placed in removal proceedings.

Typically, there are 140,000 total employment-based visas made available each fiscal year across all EB categories, with 7.1% of that total (approximately 10,000) allocated to EB-5 investors and their derivatives (spouses and children)<sup>5</sup>. Admissions have fluctuated over the years: in some years, they have fallen well below their allocation; in others, they have reached the maximum allotted. Immigrant admissions under the EB-5 category were relatively low in FY2020 (3,966) and FY2021 (2,635) during the COVID-19 pandemic, down from 9,082 in FY2019 (see **Figure 3**). Admissions increased to 10,885 in FY2022, on par with pre-pandemic levels. New applications for the EB-5 program, however, remain low relative to recent years.

<sup>1</sup> S.Rept.101-55, p. 21.

<sup>2</sup> Immigration and Nationality Act (INA) §203(b)(5). For more on the employment preference immigration system, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

<sup>3</sup> For more information about other employment-based categories, see CRS Report R47164, *U.S. Employment-Based Immigration Policy*.

<sup>4</sup> INA §216A; 8 U.S.C. §1186b.

<sup>5</sup> Under INA §101(b)(1), a *child* is an unmarried person under age 21.

Some lawmakers, investors, and industry stakeholders representing a variety of perspectives on EB-5 have held long-standing concerns about the program and its operations. These include uncertainty and unpredictability of the Regional Center Program, which must periodically be reauthorized by Congress; TEA gerrymandering; instances of fraud in the EB-5 program; visa availability; and application processing times.

In recent years, EB-5 program requirements had been in flux. A 2019 federal regulation made the most substantive modifications to the EB-5 program since the Regional Center Program was introduced, including increased investment thresholds. However, a 2021 federal court decision vacated the rule and the program reverted to its previous requirements. Also in 2021, authorization for the Regional Center Program expired and the program remained lapsed for nearly nine months.

In March 2022, Congress passed the EB-5 Reform and Integrity Act of 2022 (RIA), marking the first major EB-5 legislation enacted in three decades. The legislation codified the Regional Center Program in the INA and reauthorized it for five years; established visa set-asides for investments in rural areas, high-unemployment areas, and infrastructure projects; set new investment requirements tied to inflation; codified new requirements for TEA designations; implemented new fees; and introduced new oversight measures.

## EB-5 Investor Program Requirements

There are three primary elements to EB-5 program requirements: (1) the investment of capital (2) in an NCE (3) that results in job creation. Investors have two available pathways to gain LPR status through the EB-5 visa: the standalone pathway and the Regional Center Program. As noted previously, the overwhelming majority of investors invest through the Regional Center Program. Both pathways require the same investment threshold and job creation level. The primary differences between these pathways are the measure of job creation and the role of the investor in the enterprise. In both pathways, most investors choose to invest in TEAs, which require lower minimum investments.

### Investment of Capital

*Capital* is the investor’s “cash and real, personal, or mixed tangible assets” valued at fair market value in U.S. dollars.<sup>6</sup> Capital must be owned and controlled by the investor or held in a trust to which they maintain unrestricted access and it must be acquired through lawful means. The entire capital investment must be *at risk* for the purpose of generating a return.<sup>7</sup> The investment in the NCE must be continuously maintained during the *sustainment period*, which consists of the investor’s two years of conditional LPR status.<sup>8</sup>

Prior to the RIA, minimum investment requirements had remained unchanged from the 1990 legislation—\$1 million or \$500,000 in a TEA—until a 2019 federal regulation increased them to

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<sup>6</sup> INA 203(b)(5)(D)(ii); 8 U.S.C. 1153(b)(5)(D)(ii).

<sup>7</sup> *At risk* means immigrant investors cannot be guaranteed the return of any part of their investment or a rate of return on their investment. There must be a risk of loss and chance for gain. The investor may receive a return on the investment during or after the conditional residence period, as long as before or during the conditional residence period or before required jobs are created the return is not a portion of the principal investment and was not guaranteed to the investor. DHS, USCIS, *Policy Manual*, Vol. 6, Part G, Chapter 2, “Eligibility Requirements.”

<sup>8</sup> This is the case for investors who filed their Form I-526 on or after the RIA’s enactment date (March 15, 2022). If the investor has met the job creation requirement and the capital has been returned to the investor before the sustainment period has ended, the capital may be further deployed to maintain eligibility.

\$1.8 million or \$900,000 in a TEA.<sup>9</sup> However, when that rule was vacated by a federal district court in June 2021, the amounts reverted to those in place prior to 2019.<sup>10</sup>

The RIA subsequently codified increased investment amounts, though to a smaller extent than the 2019 regulation. Under the law, for petitions filed on or after March 15, 2022, applicants must invest in an NCE a minimum of \$1,050,000, or \$800,000 in a TEA or infrastructure project.<sup>11</sup> The new amounts reduce proportionally the discount for TEA investments from 50% to 24% from the original amounts. Additionally, the law now requires that both investment amounts be adjusted for inflation, as measured by the Consumer Price Index for All Urban Consumers (CPI-U), every five years.

The RIA also changed the designation process for TEAs. Previously, state-level officials could designate TEAs. There were widespread concerns that the census tracts combined to create TEAs were gerrymandered, or deliberately manipulated, so that projects in wealthy areas could reach the qualifying unemployment rate.<sup>12</sup> For example, for some projects located in affluent neighborhoods, TEA designations—which qualify investors for the lower investment amount—relied on pairing those projects’ census tract with adjacent, economically distressed ones. These concerns were addressed in the now-vacated modernization rule, which had implemented a change requiring that only DHS could designate TEAs and specified that only census tracts related to EB-5 projects could be included in groupings.<sup>13</sup> The RIA implemented a similar requirement.

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<sup>9</sup> DHS, “EB-5 Immigrant Investor Program Modernization,” 84 *Federal Register* 35751.

<sup>10</sup> USCIS has stated that it “does not apply the amounts from the vacated rule to any petitions, regardless of when filed.” DHS, USCIS, *Policy Manual*, Vol. 6, Part G, Chapter 1, “Purpose and Background.”

<sup>11</sup> Applicants who filed their petitions before March 15, 2022, are subject to the previous investment requirements (\$1 million, or \$500,000 in a TEA).

<sup>12</sup> See, for example, Amanda T. Boston, “Manufacturing Distress; Race, Redevelopment, and the EB-5 Program in Central Brooklyn,” *Critical Sociology* vol. 46, no. 7 (2021), pp. 961-976 (hereinafter, “Boston, 2021”); Aria Bendix, “New York’s \$25 billion Hudson Yards development claimed funding from a year’s worth of immigrant visas—here’s why it was legal,” *Business Insider*, April 12, 2019; and Norman Oder, “Column: What’s really at stake in the EB-5 investor visa overhaul: honesty,” *PBS News Hour*, December 15, 2015.

<sup>13</sup> USCIS, “New Rulemaking Brings Significant Changes to EB-5 Program,” July 23, 2019, <https://www.uscis.gov/archive/new-rulemaking-brings-significant-changes-to-eb-5-program>.

### Which investments qualify for a lower amount?

Investments in TEAs and infrastructure projects qualify for an investment amount that is 24% lower than the standard amount (\$800,000 vs. \$1,050,000). A TEA is defined under statute as either a rural area or an area experiencing high unemployment of at least 150% of the national average.

*Rural areas* are areas outside Metropolitan Statistical Areas, as designated by the Office of Management and Budget, or areas outside of cities and towns with populations of 20,000 or more, based on the most recent decennial census. The RIA directs USCIS to prioritize processing petitions associated with investments in rural areas. Annually, 20% of EB-5 visas are reserved for qualified immigrants who invest in a rural area.

To qualify as *high unemployment areas*, the census tract or contiguous census tracts in which the NCE is principally doing business must have a weighted average unemployment rate that is at least 150% of the national average. High unemployment areas must be designated by DHS; they may not be designated by any other federal, state, or local officials. Annually, 10% of EB-5 visas are reserved for qualified immigrants who invest in a high-unemployment area.

An *infrastructure project* is a “capital investment project in a filed or approved business plan, which is administered by a governmental entity (such as a Federal, State, or local agency or authority) that is the job-creating entity contracting with a regional center or new commercial enterprise to receive capital investment ... as financing for maintaining, improving, or constructing a public works project.”<sup>14</sup> Annually, 2% of visas are reserved for qualified immigrants who invest in infrastructure projects.

## A New Commercial Enterprise (NCE)

An NCE is generally one established after November 29, 1990.<sup>15</sup> The law defines an NCE as “any for-profit organization formed in the United States for the ongoing conduct of lawful business,” and includes the following business forms:

- sole proprietorship,
- partnership (whether limited or general),
- holding company and its wholly owned subsidiaries (provided that each subsidiary is engaged in a for-profit activity formed for the ongoing conduct of a lawful business),
- joint venture,
- corporation,
- business trust, and
- limited liability company.<sup>16</sup>

Investors must submit evidence that they are or will be engaged either in the “day-to-day” management of the NCE or in “policy formulation” (e.g., the investor shows evidence that he/she is a limited partner in a limited partnership agreement).<sup>17</sup>

<sup>14</sup> INA 203(b)(5)(D)(iv); 8 U.S.C. 1153(b)(5)(D)(iv).

<sup>15</sup> A business established on or before November 29, 1990, may also count as an NCE if it is restructured, reorganized, or expanded through the capital investment. November 29, 1990, is the enactment date of the Immigration Act of 1990.

<sup>16</sup> INA §203(b)(5)(D)(vi); 8 U.S.C. 1153(b)(5)(D)(vi). This definition, as codified in the INA, applies to petitions filed on or after March 15, 2022. Previously, *commercial enterprise* was similarly defined in the Code of Federal Regulations.

<sup>17</sup> DHS, USCIS, *Policy Manual*, Vol. 6, Part G, Chapter 2, “Eligibility Requirements.”

## Job Creation

Qualifying investments in an NCE must create a minimum of 10 full-time jobs.<sup>18</sup> Depending on the type of investment (standalone or regional center), these may be a combination of *direct jobs*, *indirect jobs*, and *induced jobs*.

*Direct jobs* are those created directly by the NCE (i.e., there is a direct employer-employee relationship between the NCE and the employee). Investors using the standalone pathway (non-regional center investments) must create direct jobs.

*Indirect jobs* are jobs held outside of, but created as a result of, the NCE; for example, as a result of the project's spending on goods and services from suppliers in the geographic region. Indirect job creation must be calculated using "reasonable methodologies" such as economic models.<sup>19</sup> Under the RIA, regional center investors may meet up to 90% of the job creation requirement through indirect jobs (the remaining 10% must be direct jobs).<sup>20</sup> Entities that receive and create jobs through capital received from regional center NCEs are referred to as *job-creating entities* (JCEs).

*Induced jobs* are a type of indirect jobs created from personal spending on consumer goods and services by direct and indirect employees. Regional center investors may count such jobs using reasonable methodologies. These jobs may be located outside the geographic boundaries of the regional center.<sup>21</sup>

If an immigrant invests in a *troubled business*, either directly or through a regional center, they may show preservation of jobs for at least two years, in lieu of creating new jobs.<sup>22</sup>

## Regional Center Program<sup>23</sup>

Regional centers are intended to provide a coordinated focus of foreign investment on a particular project or projects by pooling investments across multiple investors<sup>24</sup> (see section entitled "What is a Regional Center?" for a detailed discussion). In order to receive investment from EB-5 immigrants, a regional center must be designated as such by USCIS.

The Regional Center Program differs from the standalone program in three ways. First, although both pathways require individual investors to create at least 10 jobs, in the regional center context, as described above, 90% of those jobs may be indirect. Second, unlike with the standalone EB-5 program, foreign nationals investing in a regional center are unlikely to be involved in the management and daily activities of the commercial enterprise. Third, the

<sup>18</sup> The position must be full-time, meaning at least 35 hours a week, and be held by a qualifying employee (U.S. citizen, LPR, or other work-authorized migrant), meaning an individual legally able to work in the United States. Jobs are also expected to last two years and cannot be intermittent, temporary, seasonal, or transient in nature. 8 C.F.R. §204.6(j)(4).

<sup>19</sup> 8 C.F.R. §204.6.

<sup>20</sup> INA §203(b)(5)(E)(iv); 8 U.S.C. §1153(b)(5)(E)(iv). Jobs that are created by construction activity and will last less than two years may satisfy up to 75% of the job creation requirement.

<sup>21</sup> DHS, USCIS, *Policy Manual*, Vol. 6, Part G, Chapter 2, "Eligibility Requirements."

<sup>22</sup> A troubled business is one that has existed for at least two years, has incurred a net loss for accounting purposes during the 12 or 24 months preceding the priority date on the investor's Form I-526, and had a loss for the same period of at least 20% of its worth prior to the loss. 8 C.F.R. §204.6(j)(4)(ii).

<sup>23</sup> For more information about the EB-5 Regional Center Program, see CRS In Focus IF11848, *EB-5 Immigrant Investor Regional Center Program*.

<sup>24</sup> Pooled investments can also include investments from non-EB-5 investors, such as U.S. citizens.

standalone EB-5 program is permanent, while the Regional Center Program must be reauthorized.<sup>25</sup>

Foreign nationals may invest in any of the regional centers currently approved by USCIS to qualify for conditional LPR status.<sup>26</sup> Although a regional center does not have to be in a TEA, almost all foreign nationals applying for EB-5 status invest with regional centers whose defined boundaries constitute a TEA.

In recent years, reauthorization of the Regional Center Program had occurred primarily through short-term continuing resolutions, typically in consolidated appropriations bills, leading to uncertainty for regional center investors.<sup>27</sup> On June 30, 2021, authorization for the Regional Center Program expired and remained lapsed for nearly nine months, during which time USCIS did not process pending applications and rejected new applications associated with regional center investments.<sup>28</sup>

In March 2022, the RIA repealed the original pilot program and reauthorized the Regional Center Program through September 30, 2027, by amending Section 203(b)(5) of the INA (8 U.S.C. §1153(b)(5)), and implemented new program requirements.

## What is a Regional Center?

A regional center is “any economic unit, public or private, which is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment.”<sup>29</sup> More simply, the term *regional center* refers to an entity (often a limited partnership or a limited liability corporation) where investment from multiple foreign nationals and non-EB-5 investors (e.g., U.S. citizens) can be pooled to fund a broad range of projects.<sup>30</sup> Regional centers must “operate within a defined, contiguous, and limited geographic area … with the purpose of concentrating pooled investment” within that area.<sup>31</sup>

Regional centers can be privately owned, publicly owned (operated by a city, county, state, or economic development agency), or a public-private partnership.<sup>32</sup> There are many different models for regional centers. For example, in the lending model, the NCE is a lending entity that provides loans to a JCE seeking funding for business activities, such as new construction or

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<sup>25</sup> Currently, Congress has authorized the program through September 30, 2027.

<sup>26</sup> For a list of approved regional centers, see U.S. Citizenship and Immigration Services, *Immigrant Investor Regional Centers*, <http://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/immigrant-investor-regional-centers>. There is no citizenship requirement to file for regional center designation with USCIS.

<sup>27</sup> See, for example, Suzanne Monyak, “Immigrant investors on edge as EB-5 lapse enters eighth month,” *Roll Call*, February 16, 2022; and Chris Fuchs, “Will This ‘Fast Track’ to US Citizenship Be Renewed?,” NBC News, June 17, 2015.

<sup>28</sup> For more information, see archived CRS Insight IN11838, *EB-5 in Flux: Updates Regarding the Regional Center Program and Immigrant Investor Program Modernization Rule*.

<sup>29</sup> 8 C.F.R. §204.6(e).

<sup>30</sup> In addition, approximately 20% of those receiving LPR status from an investment under the standard EB-5 category are involved in pooled investments. CRS conversation with staff from USCIS’ Immigrant Investor Program Office, April 8, 2016.

<sup>31</sup> INA §203(b)(5)(E)(iii); 8 U.S.C. §1153(b)(5)(E)(iii).

<sup>32</sup> For a discussion of regional center public-private partnerships, see Lazaro Zamora and Theresa Cardinal Brown, *EB-5 Program: Success, Challenges, and Opportunities for States and Localities*, Bipartisan Policy Center, Washington, DC, September 2015.

expansions of their operations. Regional centers can also use an equity model, where pooled EB-5 investments are used to purchase equity stakes in a project company (i.e., job-creating entity). In addition, regional centers have been created for direct investment to build a variety of projects, such as hotels, a ski resort, convention centers, arenas, and retail and mixed use developments. Certain state<sup>33</sup> and local governments have also established their own regional centers or public-private partnerships (e.g., City of Dallas Regional Center and Philadelphia Authority for Industrial Development).

Since the inception of the Regional Center Program in 1992, the number of USCIS-approved regional centers has increased substantially across the United States. In FY2007, there were 11 approved regional centers.<sup>34</sup> As of April 2023, there were 640 USCIS-approved regional centers.<sup>35</sup>

The proportion of immigrant investors using regional centers, specifically those in a TEA, has been increasing, especially since FY2007. Since FY2008, immigrants investing in regional centers and their family members (derivatives) have represented by far the largest proportion of EB-5 visas issued and adjustments of status, representing 94% over the last five fiscal years of available data (FY2017-FY2022; see **Figure 3** below).

## Regional Center Designation

The RIA introduced new requirements for regional center designation by USCIS. Regional centers seeking USCIS designation must file Form I-956, Application for Regional Center Designation, and submit proposals that describe the defined, contiguous, and limited geographic area of the regional center; how the pooled investments will promote economic growth in that area; the jobs that will be created directly or indirectly; the amounts and sources of capital that have been committed to the regional center; policies and procedures to monitor NCEs and JCEs and ensure program compliance; and information about all persons involved with the regional center.<sup>36</sup> The proposal must also establish that the regional center will have a “substantive economic impact” on the regional or national economy and be supported by valid forecasting tools. The filing fee for Form I-956 is \$17,795.

Once designated, regional centers must submit a project application for each investment offering through an NCE, using USCIS Form I-956F, before an investor files a petition associated with that project. Each project application must include a business plan, a “credible economic analysis” showing estimated job creation, documents filed with the Securities and Exchange Commission (SEC) or state securities regulators, all investment and offering documents, and policies and procedures that demonstrate compliance with applicable securities laws.<sup>37</sup>

Regional centers must demonstrate ongoing eligibility for USCIS designation each year by providing evidence of continued promotion of economic growth and filing a Regional Center Annual Statement, Form I-956G. Under the 2022 legislation, regional centers must pay annual fees to fund the EB-5 Integrity Fund (see the “EB-5 Reform and Integrity Act of 2022 (RIA)” section below). Regional centers with 21 or more investors must pay an annual fee of \$20,000;

<sup>33</sup> Currently, there are no active state-run regional centers.

<sup>34</sup> DHS, USCIS, *Number of Approved EB5 Regional Centers Fiscal Year(s): 2007 – 2012*, [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I526\\_I924\\_I829\\_performancedata\\_qtr43.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I526_I924_I829_performancedata_qtr43.pdf).

<sup>35</sup> DHS, USCIS, “Approved EB-5 Immigrant Investor Regional Centers,” <https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-regional-centers/approved-eb-5-immigrant-investor-regional-centers>.

<sup>36</sup> INA §203(b)(5)(E)(iii); 8 U.S.C. §1153(b)(5)(E)(iii).

<sup>37</sup> INA §203(b)(5)(F)(i); 8 U.S.C. §1153(b)(5)(F)(i).

the fee is \$10,000 for those with 20 or fewer investors. USCIS may terminate a regional center's designation if it fails to submit the required information or demonstrate continued promotion of economic growth, does not pay the required annual fee, does not consent to an audit, or violates certain other requirements.<sup>38</sup>

### **USCIS RIA Implementation, De-Authorization of Regional Centers, and Related Litigation**

Following the RIA's enactment, USCIS announced that because the RIA repealed and replaced the 1992 law that established the Regional Center Program,<sup>39</sup> regional centers previously designated under that statute were no longer authorized. Instead, USCIS directed regional centers to seek redesignation by providing proposals "in compliance with the new program requirements."<sup>40</sup> Some Members of Congress expressed concern that redesignation was not required under the RIA and would introduce "unnecessary complications" and agency burdens.<sup>41</sup>

Resulting litigation challenged USCIS's interpretation of the law under the Administrative Procedure Act (APA). An order by the U.S. District Court for the Northern District of California granting plaintiffs' motion for a preliminary injunction stated, "USCIS was almost certainly wrong in assuming that the Integrity Act affirmatively deauthorized existing regional centers, so the agency was almost certainly wrong to announce that the centers are no longer authorized."<sup>42</sup> In a settlement agreement, USCIS agreed to allow previously designated regional centers to retain their designation.<sup>43</sup>

Subsequently, USCIS specified that regional centers remain designated only for existing projects and investors, and a Form I-956 must be filed in order to sponsor new projects and investors. New litigation challenged this policy under the APA in the U.S. District Court for the Eastern District of Louisiana, seeking a preliminary injunction. In August 2023, the court denied the preliminary injunction.<sup>44</sup>

## The EB-5 Petition Process

The EB-5 petition process requires various steps before an individual can obtain full (i.e., unconditional) LPR status. The first step of the process is filing USCIS Form I-526, *Immigrant Petition by Standalone Investor*, or I-526E, *Immigrant Petition by Regional Center Investor*, and paying the \$3,675 filing fee.<sup>45</sup> The petitioner must prove that he/she meets the requirements for EB-5 classification, including that the capital has been or is in the process of being invested, the capital was obtained by lawful means, and he/she has presented a valid business plan or showed that the investment will go to a USCIS-approved regional center.

Once USCIS approves the I-526/I-526E, the foreign national must obtain a visa from the Department of State (DOS) to enter the United States if they are not currently in the country, or

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<sup>38</sup> For more information about regional center terminations and a list of terminated regional centers, see DHS, USCIS, "Regional Center Terminations," <https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-immigrant-investor-regional-centers/regional-center-terminations>.

<sup>39</sup> P.L. 102-395, §610.

<sup>40</sup> DHS, USCIS, "EB-5 Immigrant Investor Program," <https://www.uscis.gov/working-in-the-united-states/permanent-workers/eb-5-immigrant-investor-program>, accessed April 16, 2022.

<sup>41</sup> Letter from Rep. Jerrold Nadler, Sen. Charles E. Schumer, Sen. John Cornyn, and Sen. Lindsey O. Graham to Alejandro Mayorkas, Department of Homeland Security Secretary, May 9, 2022.

<sup>42</sup> *Behring Reg. Ctr. LLC v. Mayorkas*, 22-cv-02487, (N.D. Cal. June 24, 2022), Doc. 63 at 5.

<sup>43</sup> Nate Beck, "USCIS Says Congress Wanted 'Makeover' Of EB-5 Program," *Law360*, August 19, 2022; and Dorothy Atkins, "USCIS, Investors Cut Deal Ending Suits Over EB-5 Reforms," *Law360*, August 25, 2022.

<sup>44</sup> Alyssa Aquino, "Feds' New EB-5 Center Approval Rule Likely To Stand," *Law360*, August 8, 2023.

<sup>45</sup> Electronic filing is not currently available for the I-526/I-526E. In an April 2023 stakeholder engagement webinar, USCIS stated it was taking steps to transition to electronic submission.

adjust status<sup>46</sup> to conditional permanent residence with USCIS if they are.<sup>47</sup> Most EB-5 investors and their derivatives are admitted from outside the United States.<sup>48</sup> Individuals not in the United States file Form DS-260, *Immigrant Visa and Alien Registration Application*, with DOS and individuals within the United States file Form I-485, *Application to Register Permanent Residence or Adjust Status*, with USCIS. At this stage, DOS and USCIS also check that the foreign national is not inadmissible under the INA's grounds of inadmissibility.<sup>49</sup> Those who adjust status within the United States receive their conditional residence once the I-485 is approved. Those who receive a visa from DOS receive their conditional residence once they are admitted into the United States. Under the RIA, if a visa is immediately available to the investor, he/she may file concurrently the I-526 and I-485.<sup>50</sup>

An investor can petition to remove the conditional status after approximately two years by filing Form I-829 *Petition by Investor to Remove Conditions on Permanent Resident Status*.<sup>51</sup> Form I-829 requires a \$3,750 filing fee and \$85 biometric fee.<sup>52</sup> The investor must submit evidence that he/she has invested the required capital,<sup>53</sup> sustained the investment during their U.S. residence,<sup>54</sup> and that the NCE has created or is expected to create the required jobs.<sup>55</sup> If the I-829 is approved, the conditionality on the residency of the immigrant investor and his/her derivative family members is removed.

## I-526 Petition Trends

After being largely underutilized in its early years, the EB-5 program grew in the wake of the 2008 financial crisis, which increased demand for EB-5 capital as an alternative funding source,

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<sup>46</sup> “Adjustment of status is the process by which an eligible individual already in the United States can get permanent resident status (a green card) without having to return to their home country to complete visa processing.” U.S. Citizenship and Immigration Services, *Adjustment of Status*, <https://uscis.gov/green-card/green-card-processes-and-procedures/adjustment-of-status>.

<sup>47</sup> A visa must be available for the foreign national to apply for the visa or to adjust to conditional permanent residence status—immigrant visas for employment-based immigrant preference categories are numerically limited, so they are not always immediately available.

<sup>48</sup> About 80% for the last five available fiscal years, FY2017-FY2021. DHS, *Yearbook of Immigration Statistics*, Table 7, FY2017-FY2021.

<sup>49</sup> The grounds of inadmissibility include criminal, national security, health, and indigence grounds as well as past violations of immigration law. INA §212(a). See also CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*.

<sup>50</sup> Visas may be unavailable for individuals from countries for which the EB-5 category is oversubscribed due to per-country limits. Concurrent filing of the I-526 and I-485 allows those investors who are already present in the United States on a nonimmigrant status to remain in the United States while their application is pending and adjust to LPR status without leaving the country.

<sup>51</sup> The I-829 form instructions state that an investor can petition to remove the conditions within the 90-day period immediately preceding the second anniversary of obtaining his/her conditional permanent resident status.

<sup>52</sup> Under 8 C.F.R. §103.17, “DHS may charge a fee to collect biometric information, to provide biometric collection services, to conduct required national security and criminal history background checks, to verify an individual’s identity, and to store and maintain this biometric information for reuse to support other benefit requests.” During a biometric services appointment, USCIS captures fingerprints, photographs, and signatures from I-829 applicants.

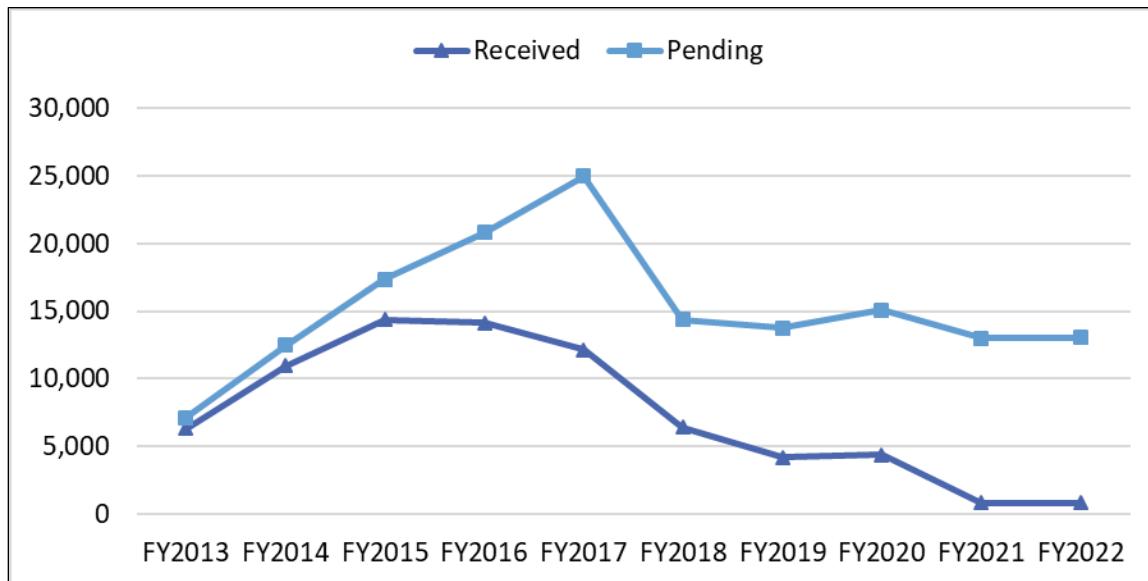
<sup>53</sup> The evidence may include an “audited financial statement or other probative evidence.” See 8 C.F.R. §216.6.

<sup>54</sup> Such evidence may include bank statements, invoices, receipts, contracts, business licenses, federal/state income tax returns, and federal/state quarterly tax statements. See 8 C.F.R. §216.6.

<sup>55</sup> For direct jobs, evidence may include payroll records, tax documents, and Forms I-9; for indirect jobs, evidence may be generated using “economically or statistically valid forecasting devices.” For more information, see DHS, USCIS, *Policy Manual*, Vol. 6, Part G, Chapter 5, “Removal of Conditions.”

particularly for real estate development projects.<sup>56</sup> Filings of Form I-526 (investor petitions) remained high through FY2017, and then dropped substantially through FY2022 (**Figure 1**), likely reflecting impacts from increased investment amounts under a now-vacated federal regulation (see the “EB-5 Immigrant Investor Program Modernization Regulation” section below), long processing times, uncertainty regarding the Regional Center Program, and the COVID-19 pandemic.

**Figure 1. Forms I-526 and I-526E Received and Pending with USCIS, FY2013-FY2022**



**Source:** DHS, USCIS, “All USCIS Application and Petition Form Types,” multiple years.

**Note:** The I-526E petition for regional center investors was introduced following passage of the RIA; previously, all investors used the I-526.

Until recently, Chinese nationals have driven new applications for the EB-5 program (**Figure 2**). In FY2013, Chinese nationals represented approximately 84% of I-526 petitions filed with USCIS. Chinese nationals’ filings declined substantially in FY2018, to 38% of filings, driving a general decline in participation as USCIS proposed major changes to the program via regulatory action (see the “EB-5 Immigrant Investor Program Modernization Regulation” section below). Filings by Chinese nationals declined to 2.5% of the total in FY2022.

In recent years, USCIS has been under scrutiny for its backlog of pending petitions, including EB-5 petitions.<sup>57</sup> USCIS experienced a growing backlog of pending I-526 petitions through FY2017 (**Figure 1**), which then declined after the IPO restructured and hired more personnel. Pending petitions increased again between FY2019 and FY2020, then declined approximately 14% from FY2020 to FY2021 during the Regional Center Program lapse. Pending petitions have generally plateaued since FY2021, even though filings have declined substantially in recent

<sup>56</sup> Testimony of Jeanne Calderon, NYU Stern School of Business Clinical Associate Professor, in U.S. Congress, House Committee on the Judiciary, *Is the Investor Visa Program an Underperforming Asset?*, hearing, 114<sup>th</sup> Cong., 1<sup>st</sup> sess., February 11, 2016, <https://docs.house.gov/meetings/JU/JU00/20160211/104454/HHRG-114-JU00-Wstate-CalderonJ-20160211.pdf>.

<sup>57</sup> The agency has announced backlog reduction plans. For example, see DHS, USCIS, “Reducing Processing Backlogs,” <https://egov.uscis.gov/processing-times/reducing-processing-backlogs>; and “USCIS Announces New Actions to Reduce Backlogs, Expand Premium Processing, and Provide Relief to Work Permit Holders,” press release, March 29, 2022.

years.<sup>58</sup> As of the second quarter of FY2023, 12,819 Forms I-526/I-526E were pending with USCIS.<sup>59</sup>

USCIS publishes processing times covering six-month periods that show the mean time it took to complete 80% of petitions that were adjudicated during that six-month period.<sup>60</sup> For Form I-526, these include 56 months for all nationals other than those from China, and 85 months for Chinese nationals.<sup>61</sup> USCIS historical processing data for the I-526 show a steady increase in median processing times from FY2018 (18 months) to FY2023 as of August 2023 (50 months), despite a general decline in filings during that period.<sup>62</sup>

In recent years, USCIS has experienced processing backlogs for a range of immigration benefits, resulting from insufficient staffing and impacts from the COVID-19 pandemic.<sup>63</sup> The agency has responded with backlog reduction strategies.<sup>64</sup> For example, for Form I-526, USCIS is using a “visa availability approach” that prioritizes processing for investors for whom a visa is already available or will be available soon.<sup>65</sup>

The RIA instructed USCIS to complete a fee study by March 2023 to determine how adjusting fees would allow the agency to complete applications more efficiently.<sup>66</sup> Separately, in 2023 the agency published a proposed rule with proposed changes to its general fee schedule that included several EB-5 fee increases. Among them, it proposed increasing filing fees for Form I-526/526E by 204%, Form I-829 by 154%, and Form I-956 by 168%.<sup>67</sup>

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<sup>58</sup> USCIS has generally contended with substantial backlogs in recent years. For more information, see DHS, USCIS, “USCIS Announces New Actions to Reduce Backlogs, Expand Premium Processing, and Provide Relief to Work Permit Holders,” March 29, 2022; and USCIS Ombudsman, *Annual Report 2022*, June 30, 2022.

<sup>59</sup> DHS, USCIS, “All USCIS Application and Petition Form Types,” July 2023.

<sup>60</sup> For more information about USCIS case processing times, see DHS, USCIS, “Case Processing Times,” <https://egov.uscis.gov/processing-times/more-info>.

<sup>61</sup> DHS, USCIS, “Check Case Processing Times,” <https://egov.uscis.gov/processing-times/>, accessed August 25, 2023.

<sup>62</sup> DHS, USCIS, “Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms By Fiscal Year,” <https://egov.uscis.gov/processing-times/historic-pt>.

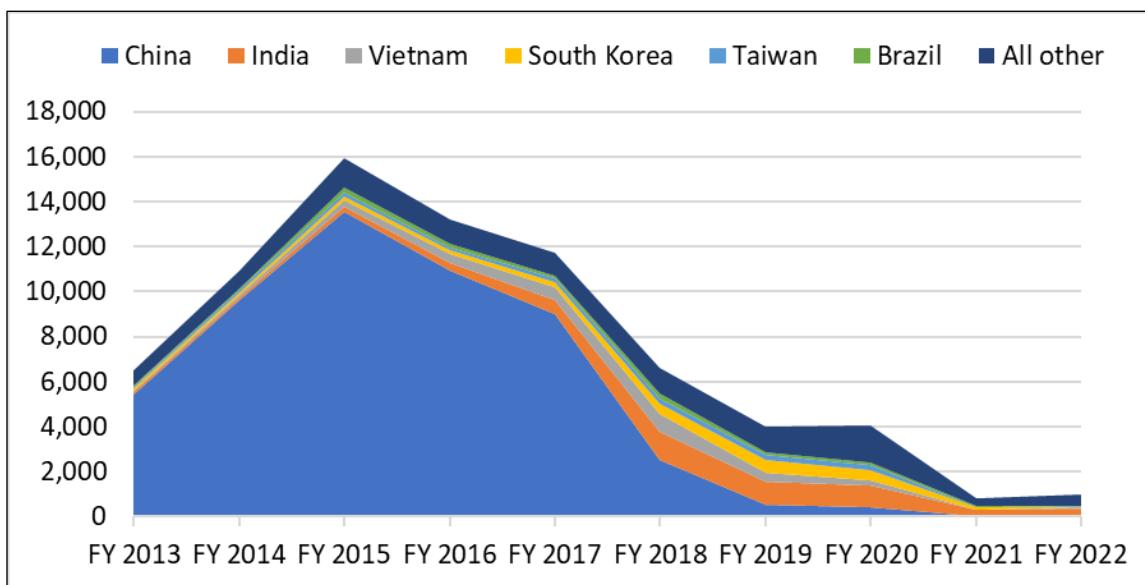
<sup>63</sup> USCIS Ombudsman, *Annual Report 2021*, June 30, 2021; and DHS, USCIS, *Fiscal Year 2022 Progress Report*, December 2022.

<sup>64</sup> See, for example, DHS, USCIS, “USCIS Announces New Actions to Reduce Backlogs, Expand Premium Processing, and Provide Relief to Work Permit Holders,” press release, March 29, 2022.

<sup>65</sup> DHS, USCIS, “Update to Visa Availability Approach for Form I-526,” July 18, 2023.

<sup>66</sup> INA §203(b)(5) note; 8 U.S.C. §1153(b)(5) note. CRS is not aware of a publicly available study as of the cover date of this report.

<sup>67</sup> DHS, USCIS, “U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements,” 88 *Federal Register* 1096, January 4, 2023.

**Figure 2. Form I-526 Filings by Country, FY2013-FY2022**

**Source:** Data provided to CRS by USCIS on July 6, 2023.

## EB-5 Admissions

Each year, approximately 10,000 EB-5 visas are available for investors and their spouses and unmarried children under age 21.<sup>68</sup> From FY2003 to FY2005, the number of EB-5 visas issued grew five-fold (from 64 to 346), and then increased by seven-fold by FY2010 (to 2,480). As mentioned previously, the program grew in popularity after 2008, when U.S. financial crisis reduced the availability of commercial lending funds and made EB-5 an attractive alternative funding source.<sup>69</sup>

Annual EB-5 admissions rose above 10,000 for the first time in FY2014 and again in FY2015, and remained just under 10,000 each year from FY2016 to FY2019 (Figure 3). Admissions dropped substantially in FY2020 and FY2021, likely reflecting impacts from the COVID-19 pandemic—which interrupted consular processing of immigrant visas abroad<sup>70</sup> and led to substantial USCIS processing backlogs<sup>71</sup>—and the 2021 lapse in authorization for the Regional Center Program, during which time USCIS paused processing EB-5-related petitions.<sup>72</sup> In FY2022, admissions under the EB-5 category rebounded to 10,885.<sup>73</sup> For several years, the vast

<sup>68</sup> Derivatives count against the numerical limit of 10,000 for the category.

<sup>69</sup> DHS, “EB-5 Immigrant Investor Program Modernization,” 84 *Federal Register* 35762, July 24, 2019; and Testimony of Jeanne Calderon, NYU Stern School of Business Clinical Associate Professor, in U.S. Congress, House Committee on the Judiciary, *Is the Investor Visa Program an Underperforming Asset?*, hearing, 114<sup>th</sup> Cong., 1<sup>st</sup> sess., February 11, 2016, at <https://docs.house.gov/meetings/JU/JU00/20160211/104454/HHRG-114-JU00-Wstate-CalderonJ-20160211.pdf>.

<sup>70</sup> U.S. Department of State, National Visa Center Immigrant Visa Backlog Report, March 2023.

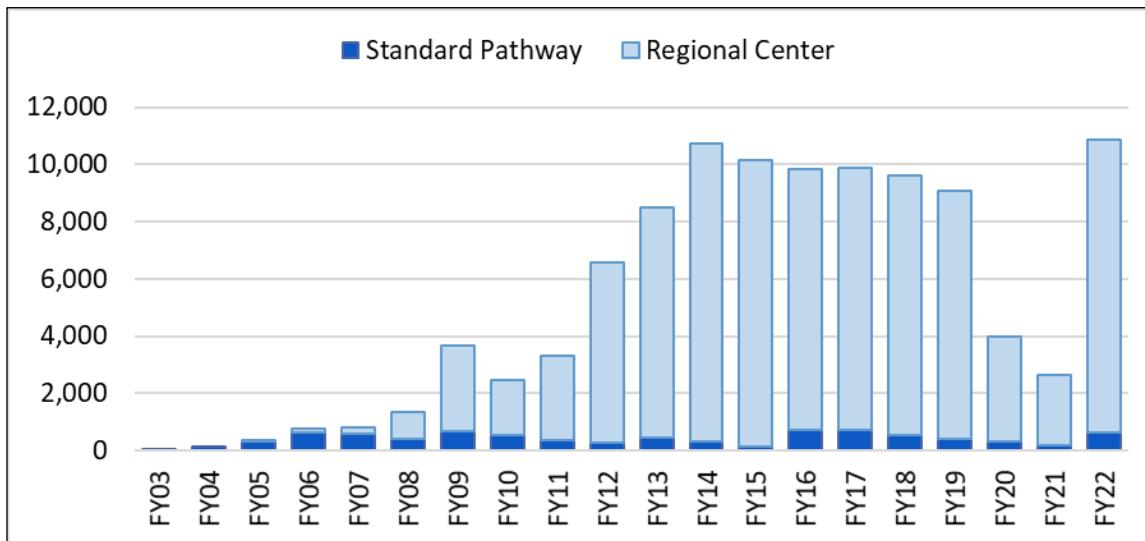
<sup>71</sup> USCIS Ombudsman, *Annual Report 2022*, June 30, 2022, pp. 2-11.

<sup>72</sup> See CRS Insight IN11838, *EB-5 in Flux: Updates Regarding the Regional Center Program and Immigrant Investor Program Modernization Rule*.

<sup>73</sup> This number exceeds the statutory cap because the INA contains provisions to re-allocate unused employment-based (continued...)

majority of immigrants admitted under the EB-5 category were regional center investors, including 94% of those admitted in FY2022.

**Figure 3. Immigrant Investor (EB-5) Admissions by Pathway, FY2003-FY2022**



**Source:** FY2013-FY2021: DHS, *Yearbook of Immigration Statistics*, Table 7, multiple fiscal years. FY2022: Department of State, *Report of the Visa Office*, Table V, Part 3.

**Notes:** Includes principal investors and derivative family members (spouses and children). DHS Yearbook tables have some missing values within standard and regional center pathways, therefore, sums presented may fall short of actual admissions.

Nationals from a relatively small set of countries dominate participation in the EB-5 program. Due to 7% per-country limits under the INA,<sup>74</sup> the EB-5 category tends to be *oversubscribed* for nationals from China and India, meaning that foreign nationals from those countries who have been approved for a visa must wait for a visa number to become available. As of March 2023, 20,936 approved petitions from Chinese nationals and 1,133 from India were awaiting visa availability.<sup>75</sup>

The INA contains an exception to the 7% per-country limit if the total number of available employment-based visas exceeds the number of immigrants eligible for those visas in a given year. In such cases, individuals from oversubscribed countries may receive more than 7% of visas.<sup>76</sup> In FY2022, nationals from China, India, and Vietnam comprised more than three-quarters of EB-5 admissions, with China alone representing 56.3% of all admissions. **Table 1** below shows the number and percentage of admissions in FY2022 for the 10 countries with at least 100 EB-5 admissions. Even though Chinese nationals are filing fewer I-526 petitions (**Figure 2**), many have already been waiting in the queue for a numerically limited visa number to become available; therefore, their admissions under the program remain high relative to other nationals.

visa numbers from the previous fiscal year. See CRS Report R47164, *U.S. Employment-Based Immigration Policy*, “Exceptions to Numerical Limits and the Per-Country Ceiling” section.

<sup>74</sup> For more information about per-country ceilings, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

<sup>75</sup> DHS, USCIS, “Number of Form I-140, I-360, I-526 Approved Employment-Based Petitions Awaiting Visa Availability By Preference Category and Country of Birth, As of March 2023,” [https://www.uscis.gov/sites/default/files/document/data/EB\\_I140\\_I360\\_I526\\_performeddata\\_FY2023\\_Q1\\_Q2.pdf](https://www.uscis.gov/sites/default/files/document/data/EB_I140_I360_I526_performeddata_FY2023_Q1_Q2.pdf).

<sup>76</sup> INA §202(a)(5)(A); 8 U.S.C. §1152(a)(5)(A).

**Table I. FY2022 Admissions by Country**

Country	Number of Admissions	Percentage of Admissions
<b>Total</b>	<b>10,885</b>	<b>100%</b>
China	6,125	56.3%
India	1,381	12.7%
Vietnam	815	7.5%
South Korea	396	3.6%
Brazil	336	3.1%
Taiwan	255	2.3%
Mexico	164	1.5%
Hong Kong	142	1.3%
Canada	121	1.1%
Venezuela	103	0.9%
All other	1,047	9.6%

**Source:** Department of State, *FY2022 Report of the Visa Office, Table V, Immigrant Visas Issued and Adjustments of Status, Part 3 (Employment Fifth)*.

## Economic Impact

Congress created the EB-5 visa category to increase investment and job creation in the U.S. economy. However, a lack of data has impeded comprehensive, longitudinal analyses of the program's economic impact and job creation, especially at the local level.<sup>77</sup> In 2013, the DHS Office of Inspector General (OIG) raised concerns<sup>78</sup> about the validity of USCIS estimates of economic impact.<sup>79</sup> In response to the OIG's recommendation, USCIS commissioned an economic impact study by the Department of Commerce Economics and Statistics Administration.

Published in 2017, the study examined EB-5 investor projects during FY2012 and FY2013. It identified \$16.7 billion in total investment spending, of which \$5.8 billion was generated by approximately 11,000 EB-5 immigrant investors (about \$521,405 per investor, indicating that most had invested in TEAs at the discounted amount).<sup>80</sup> An estimated 174,039 jobs were generated through EB-5 related projects during this period—this included jobs generated with

<sup>77</sup> Audrey Singer and Camille Galdes, *Improving the EB-5 Investor Visa Program: International Financing for U.S. Regional Economic Development*, Brookings-Rockefeller, Project on State and Metropolitan Innovation, February 2014.

<sup>78</sup> DHS Office of Inspector General, *United States Citizenship and Immigration Services: Employment-Based Fifth Preference (EB-5) Regional Center Program*, OIG-14-19, December 2013.

<sup>79</sup> USCIS reported that from FY1990 to FY2014, the EB-5 visa had generated more than \$11.2 billion in investments and at least 73,730 jobs, U.S. Congress, House Committee on the Judiciary, *Is the Investor Visa an Under Performing Asset?* testimony of Rebecca Gambler, Director of Homeland Security and Justice at the U.S. Government Accountability Office, 114<sup>th</sup> Cong., 2<sup>nd</sup> sess., February 11, 2016.

<sup>80</sup> Non-EB-5 investments included domestic and foreign sources of capital including equity from project developers, commercial loans, and investment from other project participants.

non-EB-5 investment spending. Most investment spending and jobs were generated through regional centers.<sup>81</sup>

Additional studies of economic impact have been published by stakeholder groups and other organizations not affiliated with the federal government.<sup>82</sup> A 2019 economic impact study commissioned by two advocacy groups, the EB-5 Investment Coalition and Invest in the USA, examined projects during FY2014 and FY2015.<sup>83</sup> The study identified approximately \$11 billion in capital investment through the Regional Center Program, which represented 2% of foreign direct investment in the United States during that period. Two-thirds of Regional Center Program investments were in the construction sector. Other sectors receiving these investments were hotels and motels; real estate; wholesale trade; architecture, engineering, and related services; and health care. Investments supported an estimated 355,200 jobs.

Although these studies have identified substantial capital investments, the EB-5 program has been scrutinized for the high proportion of investments that have gone to projects in affluent, urban areas,<sup>84</sup> including those made at the discounted rate for TEAs.<sup>85</sup> More recently, Congress tightened TEA requirements for high-unemployment areas (see the “EB-5 Reform and Integrity Act of 2022 (RIA)” section and **Table 2** below). There are mixed findings in the scholarly literature on the impacts of EB-5 projects: some studies find that the program leads to urban revitalization in distressed areas<sup>86</sup> while others argue that it displaces residents in working-class communities of color.<sup>87</sup>

## Fraud and National Security Oversight within EB-5

Some Members of Congress and other observers have long expressed concerns about instances of fraud in the EB-5 program.<sup>88</sup> Reports by the Government Accountability Office (GAO) have identified two general types of fraud within EB-5: (1) immigration benefit fraud committed by visa applicants, by which foreign nationals obtain visas through the EB-5 category based on fraudulent information or misrepresentation, including document fraud and identity fraud; and (2)

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<sup>81</sup> David K. Henry et al., “Estimating the Investment and Job Creation Impact of the EB-5 Program” (U.S. Department of Commerce, Office of the Chief Economist, 2017), <https://www.commerce.gov/news/reports/2017/01/estimating-investment-and-job-creation-impact-eb-5-program>.

<sup>82</sup> See, for example, David Kay, “The Economic Impact and Contribution of the EB-5 Immigration Program, 2013” (Commissioned by Invest in the USA, 2015), [https://iiusa.org/wp-content/uploads/2020/05/Economic-Impacts-of-the-EB-5-Immigration-Program\\_2013\\_FINAL-web.pdf](https://iiusa.org/wp-content/uploads/2020/05/Economic-Impacts-of-the-EB-5-Immigration-Program_2013_FINAL-web.pdf); and Audrey Singer and Camille Glades, *Improving the EB-5 Investor Visa Program: International Financing for U.S. Regional Economic Development*, Brookings-Rockefeller, Project on State and Metropolitan Innovation, February 2014.

<sup>83</sup> Jeffrey B. Carr and Robert A. Chase, “Assessment of the Economic Value and Job Creation Impacts of Project Capital Investment Activity Under the EB-5 Program,” Economic & Policy Resources, February 28, 2019.

<sup>84</sup> Eliot Brown, “How a U.S. Visa-for-Cash Plan Funds Luxury Apartment Buildings,” *Wall Street Journal*, September 10, 2015, <https://www.wsj.com/articles/how-immigrants-cash-funds-luxury-towers-in-the-u-s-1441848965>.

<sup>85</sup> Testimony of Jeanne Calderon, NYU Stern School of Business Clinical Associate Professor, in U.S. Congress, House Committee on the Judiciary, *Is the Investor Visa Program an Underperforming Asset?*, hearing, 114<sup>th</sup> Cong., 1<sup>st</sup> sess., February 11, 2016, <https://docs.house.gov/meetings/JU/JU00/20160211/104454/HHRG-114-JU00-Wstate-CalderonJ-20160211.pdf>.

<sup>86</sup> Edward S. Smith, “Revitalizing Urban America through the EB-5 Immigrant Investor Program,” in *Immigrant Entrepreneurship in Cities*, ed. Cathy Yang Liu (Atlanta: Springer, The Urban Book Series, 2020), pp. 265-277.

<sup>87</sup> Boston, 2021.

<sup>88</sup> See, for example, Senate Committee on the Judiciary, *Citizenship for Sale: Oversight of the EB-5 Investor Visa Program*, hearing, 115<sup>th</sup> Cong., 2<sup>nd</sup> sess., June 19, 2018.

the defrauding of “good-faith” foreign national investors by third parties associated with regional centers, NCEs, or JCEs.<sup>89</sup>

Multiple government entities and law enforcement agencies monitor the EB-5 program for fraud, misconduct, and national security concerns. Within DHS, these include USCIS’s Fraud Detection and National Security Directorate (FDNS) and Immigration and Custom Enforcement’s (ICE’s) Homeland Security Investigations. Outside DHS, entities include the Department of State, the SEC, the Federal Bureau of Investigation, and the Department of the Treasury’s Committee on Foreign Investment in the United States.<sup>90</sup>

In a 2023 report, GAO acknowledged RIA provisions that address certain concerns about fraud, including codifying DHS’s authority to deny or revoke EB-5 petitions predicated on fraud or misrepresentation and to terminate or sanction regional centers (see the “EB-5 Reform and Integrity Act of 2022 (RIA)” section below).

The report specifies a number of steps taken by IPO and FDNS to address risks of fraud in the immigrant investor program in recent years, including conducting fraud and national security assessments, establishing a Compliance Division to review regional centers’ compliance with program requirements, conducting site visits to NCEs and JCEs, and sponsoring fraud and national security trainings.

GAO’s analysis also identified certain shortcomings with regard to national security and fraud. For example, GAO’s analysis of USCIS data found that although the agency documented a general increase in national security concerns associated with the program from FY2016 through FY2021, it did not have readily available data on fraud or national security trends, such as specific reasons for denying petitions or terminating regional centers.<sup>91</sup>

For years, lawmakers concerned about instances of fraud and national security risks in the program called for legislative reforms to it, and, in some instances, for termination of EB-5.<sup>92</sup>

## EB-5 Immigrant Investor Program Modernization Regulation

Prior to the RIA in 2022, the most significant changes to the EB-5 program in decades were made by executive action under the now-vacated DHS EB-5 Immigrant Investor Program Modernization regulation.<sup>93</sup> The regulation, proposed in January 2017 and implemented in November 2019, represented the most substantial overhaul to the EB-5 program since Congress introduced the Regional Center pilot program in 1992. It

- increased minimum capital investment amounts from \$1 million, or \$500,000 in a TEA, to \$1.8 million, or \$900,000 in a TEA;
- removed states’ authority to designate areas of high unemployment as TEAs; and

<sup>89</sup> U.S. Government Accountability Office (GAO), *Immigrant Investor Program Additional Actions Needed to Better Assess Fraud Risks and Report Economic Benefit*, GAO-15-696, August 2015, and *Immigrant Investor Program: Opportunities Exist to Improve Fraud and National Security Risk Monitoring*, GAO-23-106452, March 28, 2023 (hereinafter, GAO 2023).

<sup>90</sup> For a full description of each entity’s role and an overview of their recent fraud and national security data, see GAO 2023, pp. 13-14 and pp. 36-38.

<sup>91</sup> GAO 2023, p. 32.

<sup>92</sup> See, for example, H.R. 2901 and S. 831 in the 117<sup>th</sup> Cong. and S. 2540, S. 2778, and H.R. 773 in the 116<sup>th</sup> Cong.

<sup>93</sup> DHS, “EB-5 Immigrant Investor Program Modernization,” 84 *Federal Register* 35750, July 24, 2019.

- allowed applicants to retain priority dates of approved I-526 petitions for a subsequent application (e.g., if the investor's application was approved but the regional center in which they invested was terminated for reasons outside their control).

In December 2020, the Behring Regional Center, LLC, sued DHS alleging in part that then-Acting Secretary Chad Wolf had been improperly appointed and, therefore, the rule was in violation of the Administrative Procedure Act (*Behring Regional Center, LLC v. Wolf et al.*). On June 22, 2021, the U.S. District Court for the Northern District of California granted plaintiffs' motion for summary judgement and vacated the rule. As a result, as of that date, the regulations that were in place before November 19, 2021, went back into place. USCIS initially appealed the decision but later withdrew its appeal.

## EB-5 Reform and Integrity Act of 2022 (RIA)

In March 2022, Congress passed the RIA within the Consolidated Appropriations Act, 2022 (P.L. 117-103, Division BB).<sup>94</sup> Legislative reform to the EB-5 program had long been awaited by many lawmakers, industry stakeholders, and other observers, particularly after the 2019 modernization rule was vacated and the Regional Center Program lapsed for an extended period in 2021.<sup>95</sup>

The table below outlines some of the major changes made by the RIA, some of which were discussed previously in this report, and compares them with the provisions in place prior to the RIA (note that the table does not account for changes made under the modernization rule, which was vacated).

**Table 2. Selected EB-5 Provisions Before and After the Reform and Integrity Act**

	Pre-RIA	RIA
Investment amounts	\$1,000,000 non-TEA \$500,000 TEA	\$1,050,000 non-TEA \$800,000 TEA/infrastructure project
Adjustment of investment amounts	None	Minimum investment amounts are to be adjusted every five years based on the change in the unadjusted consumer price index for all urban consumers
High-unemployment area TEA designation	State government officials could certify a TEA by identifying a particular geographic or political subdivision as an area of high unemployment	Can only be made by DHS; includes the census tract, or contiguous census tracts in which the NCE is principally doing business and for which the weighted unemployment rate is 150% of the national average
Visa set asides (percentage or number of visas)	3,000 visas for TEAs (rural areas or high-unemployment areas) 3,000 visas for Regional Center Program	20% rural area, 10% high-unemployment area, 2% infrastructure project

<sup>94</sup> Prior to the RIA's enactment in 2022, previous iterations of EB-5 immigration reform bills had been introduced in the 116<sup>th</sup> Cong. (S. 2540 and S. 2778) and 1<sup>st</sup> sess. of the 117<sup>th</sup> Cong. (S. 831).

<sup>95</sup> See, for example, Ron Nixon, "Program That Lets Foreigners Write a Check, and Get a Visa, Draws Scrutiny," *The New York Times*, March 15, 2016; Suzanne Monyak, "Immigrant investors on edge as EB-5 lapse enters eighth month," *Roll Call*, February 16, 2022; and Andy J. Semotiuk, "EB-5 Immigration News - Will The Program Be Resuscitated?" *Forbes*, June 28, 2021.

Pre-RIA	RIA
Regional Center Program authorization	Last authorized through June 30, 2021 (six-month reauthorization) Authorized through September 30, 2027 (five-year reauthorization)

**Source:** CRS analysis of the RIA.

**Notes:** Applications are subject to the law in place at the time of filing.

## Regional Center Oversight Provisions

The RIA enacted several new oversight measures for the Regional Center Program. The legislation repealed its former authorizing provision, Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (P.L. 102-395). It codified the Regional Center Program in INA Section 203(b)(5)(E) and authorized it through September 30, 2027.

The legislation established the EB-5 Integrity Fund, comprised of annual regional center fees (\$20,000, or \$10,000 for those with 20 or fewer investors) and \$1,000 fees from each Immigrant Petition by Regional Center Investor filed. USCIS must use the fund for investigations, including detecting and investigating fraud and other crimes related to the program, determining compliance with immigration laws, and conducting regional center audits (every five years) and site visits (for each new NCE or JCE).

The RIA also requires that

- DHS audits each regional center at least once every five years;
- DHS conducts at least one site visit to each NCE or JCE;<sup>96</sup>
- regional centers submit a comprehensive business plan, a credible economic analysis showing estimated job creation, and other financial and policy documentation prior to any individual investor's application based on that regional center; and
- regional centers submit annual statements indicating their compliance with program requirements and accounting for collected fees.

The legislation established requirements for record keeping, fund administration, and annual statements and sets rules and standards for third-party promoters of a regional center, NCE, or JCE, who must now register with USCIS. DHS may sanction regional centers that fail to submit annual statements, submit fraudulent statements, or deviate from their business plans in a manner that violates their designation under the law. The RIA authorizes DHS to establish sanctions including fines, temporary suspension from program participation, permanent bars from program participation, and terminating regional center designations. It forbids the involvement in regional centers of persons who have committed fraud or certain other criminal offenses, persons who are not U.S. nationals or LPRs, and foreign governments.

<sup>96</sup> There is no specified time period; DHS must provide regional centers at least 24 hours' notice of a visit.

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