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MARCH

Passage of the EB-5 Reform and Integrity Act of 2022



SEPTEMBER

"Grandfathering" Deadline



2026

2027



SEPTEMBER

EB-5 Program Reauthorization Deadline



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USCIS EB-5 Updates:

Policy Shifts, Adjudication Trends, and Industry Implications



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The U.S. Citizenship and Immigration Services (USCIS) plays a central role in administering the EB-5 Immigrant Investor Program (the EB-5 Program), adjudicating petitions and implementing policies enacted by Congress. Since the EB-5 Reform and Integrity Act of 2022 (RIA) took effect, USCIS, particularly through its Immigrant Investor Program Office (IPO), has sought to standardize adjudications, reduce backlogs, and enhance program integrity.

Yet the rapid pace of statutory reform, litigation interventions, and surging investor demand has created operational and policy challenges. This article provides a practice-oriented, up-to-date review of EB-5 policy shifts, adjudication trends, administrative challenges, and their practical implications for investors, regional centers, and practitioners.

I. EB-5 ADJUDICATION LANDSCAPE: IPO'S ROLE AND PRIORITIES

The IPO was created to centralize and professionalize EB-5 adjudications, consolidating expertise in law, finance, economics, and business. It adjudicates regional center petitions (e.g., I-956, I-956F) and investor-level petitions (e.g., I-526E, I-829, legacy I-526). IPO's priorities are shaped by statutory processing goals, integrity mandates, and resource constraints.

Recent operational reforms include direct electronic communications between adjudicator teams and petitioners, accelerated processing pilot programs to shorten adjudication timelines, and enhanced use of subject-matter specialists (e.g., economists for job creation reviews and targeted employment area (TEA) determinations).

Despite these efforts, stakeholders continue to experience uneven adjudication timelines, with some filings taking significantly longer to be adjudicated than others despite having similar profiles. These disparities suggest that IPO's resource allocation and procedural standardization are not yet fully aligned with the statutory objectives.

II. KEY POLICY SHIFTS AFFECTING EB-5 ADJUDICATIONS

RIA Implementation

The RIA fundamentally reshaped the EB-5 Program by introducing enhanced remedies to ensure integrity and compliance, revised investment requirements, and structural reforms designed to strengthen the program's economic impact and anti-fraud framework. Key provisions include: new tools to ensure integrity and compliance (e.g., sanctions, debarment); revised investment thresholds and centralized authority for TEA designations; and mandatory compliance audits, integrity fund contributions, and submission of audited annual statements by regional centers.

USCIS updated its Policy Manual to incorporate these RIA directives. While this guidance provides clarity, practitioners note that adjudicators' interpretations can vary, leading to inconsistent notices across similar filings.

Fee Rule and Regulatory Modernization

In October 2025, the Department of Homeland Security issued a Notice of Proposed Rulemaking (DHS Docket No.

USCIS 2025-0139) proposing to rebalance EB-5 filing fees, including reductions from previously increased levels, a new technology fee, and integrity fund fees and penalties, along with a new Form I-527 for legacy investor petitions.¹ The proposed changes were intended to fund EB-5 adjudication costs, support processing goals, and maintain program integrity.

However, the fee landscape shifted following the issuance of a decision in *Moody et al. v. Mayorkas et al.* (2025). In that case, the United States District Court for the District of Colorado entered an order in November 2025 that halted the April 2024 EB-5 fee increases, finding that USCIS had not completed the statutorily required fee study before implementing higher fees. As a result, EB-5 filing fees reverted to pre-April 2024 levels, and USCIS is required to develop a new fee rule consistent with statutory requirements. As of the date of this article, the final fee rule remains pending and USCIS has not yet issued a finalized version. Stakeholders should continue to monitor developments, as the agency's next steps will determine fee levels, compliance obligations, and resource allocation for IPO adjudications.

These developments highlight the legal and procedural constraints governing USCIS's authority to adjust EB-5 fees and underscore the importance of following the correct procedures when seeking to modernize and update the regulations that pertain to the EB-5 Program. They also create a period of operational uncertainty and planning for IPO, as the agency balances investor cost impacts, resource needs, and compliance with judicial requirements.

As a practical result, the EB-5 industry has faced significant administrative challenges, including investors and regional centers receiving initial receipts reflecting the now-vacated higher fees, followed by corrected receipts showing reduced, court-mandated fees, leading to confusion and additional tracking burdens for filings (such as I-526E, I-829, and I-956G).

III. Adjudication Trends and Challenges

Surge in Adjudications and Backlog Dynamics

Quarterly data analyzed by Invest in the USA (IIUSA) indicate a significant surge in EB-5 adjudication volume, with quarterly approval milestones far exceeding pre-RIA figures (e.g., record I-526E petition approvals in fiscal year 2025, which began on October 1, 2024 and ended on September 30, 2025).²

Rural TEA and high-unemployment investment categories have shown strong growth, consistent with RIA's set-aside visa allocations and statutory intent.

Nonetheless, adjudication inconsistencies persist, with some filings adjudicated significantly faster than others that are similar in many respects. Recent FOIA-based analyses suggest resource constraints and internal prioritization decisions continue to impact consistency, highlighting an area where IPO may need further operational refinement.³

Effective March 30, 2026, USCIS will transition to a balanced First-In, First-Out (FIFO) approach that prioritizes statutory requirements, sequencing I-526E petitions only after a decision on the associated I-956F, prioritizing rural petitions, and then addressing other post-RIA I-526/E petitions. This updated guidance introduces a guiding principle that processing volume should be tied to "facilitating usage of reserved visas," which is somewhat ambiguous and leaves open questions about how it will differ in practice from the prior visa availability approach.⁴

Heightened Documentation and Evidentiary Scrutiny

USCIS continues to issue Requests for Evidence (RFEs), Notices of Intent to Deny (NOIDs), and Notices of Intent to Revoke (NOIRs) in EB-5 cases at a relatively high rate, reflecting heightened scrutiny of source- and path-of-funds documentation pertaining to complex financing structures, job creation substantiation tied to economic models and TEA calculations, and use of alternative financing instruments such as investor loans or self-directed IRAs. Practitioners note that adjudicators' demands have expanded, creating ambiguity as to what USCIS considers sufficient to satisfy the preponderance of the evidence standard, and that the broadened requirements have contributed to notable inconsistencies across adjudications, creating both unpredictability and operational strain for petitioners and counsel.

Discretionary Review and Expanded Criteria

Recent policy changes in adjudication guidance for all immigration benefits (although not EB-5-specific) broaden the factors officers may consider in discretionary decisions, including perceived national interest assessments and compliance histories. While employment-based cases generally focus on eligibility criteria, EB-5 adjudications may reflect a heightened holistic review in borderline or compliance-related contexts.

IV. Legal and Administrative Oversight

Litigation continues to shape the EB-5 Program. Beyond the fee rollback, industry challenges over sustainability requirements, source- and path-of-funds requirements, and guidance interpretation illustrate the complex interplay between policy, law, and implementation.

The Administrative Appeals Office (AAO) remains a key mechanism for resolving disputes and setting precedents, yet appeals can be time-consuming and costly, adding uncertainty and additional expenses for investors and regional centers.

V. Future Outlook

Finalization of Policy and Regulatory Reforms

The anticipated finalization of USCIS's EB-5 adjudications policy memorandum and a revised fee rule consistent with statutory mandates will be pivotal for future adjudication consistency and resource planning. Stakeholder engagement during these processes is essential to ensure greater consistency in adjudication, alignment of resources with statutory processing mandates, and transparent and predictable compliance expectations.

Enhanced Data and Fraud Risk Tracking

The Government Accountability Office (GAO) recommendations on fraud and national security monitoring have prompted IPO to implement additional case-level data collection and analytics measures. While these steps may support future trend analysis and oversight, it remains unclear how they will impact adjudication consistency or the frequency of notices (such as RFEs, NOIDs, or NOIRs) in practice.

Investor and Practitioner Preparedness

Given evolving documentation expectations and increasingly complex compliance frameworks, and in order to navigate the heightened scrutiny, investors and practitioners must prepare petitions with meticulous source- and path-of-funds evidence, clear and fully supportable legal analyses, and robust economic substantiation.

The EB-5 industry is also bracing for a significant surge in filings ahead of the September 30, 2026 grandfathering deadline. Under the RIA, any investor who files an I-526E petition on or before that date is grandfathered – meaning that even if the EB-5 Regional Center Program is not reauthorized after 2027, those petitions must still be adjudicated under current law.⁵ Industry participants widely anticipate this deadline will produce a concentrated wave of new filings, as investors move to secure legal certainty before changes take effect. For IPO, this surge will intensify existing backlog pressures, strain adjudication resources, and compound the processing inconsistencies, making practitioner preparedness and petition quality more critical than ever.

CONCLUSION

Decision-making at IPO reflects a program in transition: more structured, integrity-focused, and procedurally anchored than ever before. Yet challenges remain: inconsistent adjudication timelines, evolving and sometimes ambiguous evidentiary expectations, and administrative burdens from policy shifts and fee reversals.

While IPO has made measurable progress, addressing these operational gaps and improving transparency will be critical for the EB-5 Program to fully realize the objectives envisioned by the RIA. Continued stakeholder engagement, data transparency, and collaborative refinement are essential for restoring predictability and confidence among investors and regional centers in 2026 and beyond. ■

¹ The official Federal Register notice was published on October 23, 2025: <https://www.federalregister.gov/documents/2025/10/23/2025-19642/us-citizenship-and-immigration-services-employment-based-immigrant-visa-fifth-preference-eb-5-fee>

² IIUSA's Q3 FY2025 report: <https://iiosa.org/iiosa-report-uscis-q3-fy2025-data-highlights-record-high-i-526e-approvals-and-continued-growth-of-eb-5-demand/> nt Petition Eligibility Requirements." Policy Manual Volume 6 (Chapter 2). U.S. Citizenship and Immigration Services. State. Gov, <https://www.uscis.gov/policy-manual/volume-6-part-g-chapter-2>

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³ IIUSA Data Dashboard: <https://iiosa.org/eb5-visa-data-dashboard/>

⁴ USCIS EB-5 Questions and Answers page: <https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/eb-5-questions-and-answers> (last reviewed/updated: 02/25/2026)

⁵ INA § 203(b)(5)(S); see also EB-5 Reform and Integrity Act of 2022, div. BB of the Consolidated Appropriations Act, 2022, Pub. L. 117-103, 136 Stat. 49, 1070 (March 15, 2022).