

EB-5 industry gears up for potential government shutdown

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By Marta Lillo

The EB-5 industry is better prepared to face a potential U.S. government shutdown on Sep. 30 if Congress fails to pass a budget before the end of the fiscal year.

The EB-5 community could continue business as usual, mainly thanks to the [EB-5 visa program's lapse in 2021](#) and its legislative reauthorization in 2022, unlike the [previous 35-day shutdown between 2018 and 2019](#), which affected EB-5 applications overall because the U.S. Citizenship and Immigration Services (USCIS) depended on the U.S. government's funding legislation at the time.

Between 2018 and 2019, new EB-5 applicants could apply, but the USCIS only processed their forms once it ended. Also, new immigrant visa interviews were suspended, and only pre-scheduled interviews took place. Additionally, the inability to file a further adjustment of status application (AOS) affected employment work authorization (EAD) and advance parole (AP) renewal.

This time, however, the agency would be resilient because of its financial autonomy since 2022.

“USCIS largely generates revenue through user filing fees, so it does not rely directly on Congressional budget-based funding. Therefore, it is possible that any initial effects on processing immigrant petitions would be quite small, depending on the length of any shutdown, of course,” says EB-5 immigration attorney Fredrick Voigtmann from Law Office of Fred Voigtmann P.C.

RIA shields the EB-5 visa program from shutdowns to a point

During a government shutdown, federal agencies typically reduce or halt their operations, with some being more affected than others. If the U.S. government were to shut down on Oct. 1, the USCIS would be among them, were it not for the EB-5 lapse in 2021.

On Jun. 30 of that year, the EB-5 program came to a complete halt. The EB-5 community lived in limbo for nine months until Congress reauthorized the program through the EB-5 Integrity and Reform Act (RIA) in 2022.

Since then, the USCIS maintains the authority to process EB-5 investor petitions through regional centers, says John Baker, chief marketing officer at LCR Capital Partners. “It’s no longer part of the omnibus spending bills or the continuing resolutions the Congress uses to buy time while they decide on key programs.”

Given the USCIS’ funding comes from paid user fees, EB-5 applications and regional centers will come out mostly unscathed if the shutdown eventually happens. “Regional centers do not need to announce the program is open or closed because it will be business as usual during a shutdown. It does mean pushier regional centers can’t use hard sell tactics like ‘only xx days left before program shutdown,’ but that is likely a good thing. That messaging hasn’t been good for the industry overall,” Baker adds.

Moreover, Voigtmann believes that the potential 2023 shutdown would need to be very long to start impacting the EB-5 community. “Unless the shutdown is very lengthy, it will not be even close to the same impact as COVID-19 and the [Regional Center] R.C. program expiration/passage of the RIA,” he concludes.

EB-5 investors should plan ahead regardless of potential shutdown

Baker says delays and processing issues are of more immediate concern to EB-5 investors right now. “The processing times have been so long that a short-term shutdown is irrelevant. Even with a 10-12 month rural I-526 approval, a 30-day delay isn’t significant. The bigger concern is the impact on the reputation of the U.S. in general. Investors are choosing to move to the United States, and seeing the agencies and Congress being dysfunctional does not support that decision.”

Meanwhile, Edward Beshara, the managing partner at Beshara PA Global Migration Law Firm, recommends that EB-5 investors plan accordingly by concurrently filing their EB-5 petition and applications for conditional permanent residency, employment authorization cards, and advance parole in the U.S.

“Some EB-5 investors and family members may require to leave and re-enter the U.S. under emergency advance parole. USCIS will continue to provide services, receive in-office interviews for emergency parole requests, and issue [Alien Documentation, Identification, and Telecommunication] ADIT stamps in the EB-5 Applicants’ passports,” the EB-5 attorney explains.

In the case of those EB-5 investors who already have their conditional permanent residency status or are re-entering the U.S. with advance parole at the time of the potential shutdown, Beshara says the [U.S. Customs and Border Protection] USCBP should continue to process their entrance at the port of entry.

Limited impact on consular EB-5 visa processing

Therefore, the USCIS should continue processing I-526, I-485, and I-829 petitions. However, Baker cautions there could be a delay if the USCIS must confer with another federal agency. “New petitions and the adjudication of petitions should not be impacted unless the USCIS [Immigrant Investor Program Office] IPO staff needs to communicate with an agency that is shut down. Services like E-Verify can be stopped, which can impact processing.”

Foreign nationals who apply for EB-5 and other visas through U.S. embassies and consulates will still receive immigration services during a government shutdown.

However, these services could be delayed if the U.S. Department of State (DOS) closes its facilities abroad or reschedules appointments, depending on the shutdown duration.

Ronald Klasko, managing partner of Klasko Immigration Law Partners, LLP and an EB-5 immigration attorney, notes that the Department of State may or may not continue to issue EB-5 visas during a government shutdown. “The Department of State does maintain a small reserve of unallocated funding that can be used to allow continued operations. However, The Department of State has reduced or halted visa issuance during prior shutdowns. Investors with scheduled appointments at U.S. consuls after Sep. 30 should confirm if the interview will continue as scheduled. Investors requiring visas to return to the U.S. should consider obtaining such visas prior to Sep. 30, if possible,” he advises.

Meanwhile, Baker adds that it depends on whether DOS closes consulates or changes appointments if the shutdown progresses. “In the past, consulates have remained open. AOS interviews occur in the U.S. with USCIS personnel and should not be affected,” he

says. “Given that investors making a concurrent adjustment of status cannot leave the U.S. until their A.P. is received, this is important. All clients should get advice from their immigration attorney.”

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