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Continuing Resolution Would Extend the EB-5 Program to December 7

By Debbie A. Klis

On September 27, 2018, the House of Representatives passed an \$854 billion spending bill, H.R. 6157 - Department of Defense and Labor, Health and Human Services, and Education Appropriations Act, 2019 and Continuing Appropriations Act, 2019 to avoid a federal government shutdown, while pushing the funding deadline for others until Dec. 7. The bill passed by 361-61, a week after the Senate passed an identical measure by a vote of 93-7. H.R. 6157 contains a continuing resolution (“Continuing Resolution”) that includes a spending bill to continue funding specified federal programs without change through December 7, 2018. Among the federal programs covered by the Continuing Resolution is the U.S. Immigrant Investor Program known as EB-5.

Effect on the EB-5 Program

The Continuing Resolution’s extension of the EB-5 Program to December 7 means no changes to the current rules thus permitting business as usual for the time being. It is possible that Congress or the U.S. Citizenship & Immigration Services (“USCIS”) would implement new regulations before the expiry of the extension term. EB-5-industry stakeholders are optimistic that the clean extension of the EB-5 Program will lead to a long-term plan from Congressional leaders, possibly after the upcoming mid-term elections in November. Likewise, as we’ve previously reported, USCIS may implement new rules for the EB-5 program in the near future or wait for Congress to act. USCIS’s draft regulations contain several modifications to the EB-5 Program including the limiting investments in highly-desired urban areas, encouraging rural investment, increasing the minimum investment and the amount of the associated filing fees.

Consequently, the clean extension affords additional time for stakeholders to make full use of the EB-5 Program to complete their current fundraising. The extension permits potential foreign investors to participate in the EB-5 Program while the minimum investment amount remains at \$500,000 for projects and companies located within a Targeted Employment Area (TEA) or \$1,000,000 if outside of a TEA. As previously reported by Polsinelli, the increase to the per-investor minimum investment amount may jump from \$500,000 to between \$800,000 and \$1,350,000.

What Else is New with EB-5?

In addition to Congress likely to pass another short-term, clean extension of the EB-5 Program, other recent trends or developments we have observed in connection with the EB-5 Program include:

- New I-526 Petitions from investors in India under the EB-5 Program have doubled in the current 2018 fiscal year ending September 30;¹
- China is not the only country currently subject to retrogression, as Vietnam became subject to retrogression in April 2018;²
- The countries likely to face retrogression in the near future are India, South Korea and Brazil unless Congress increases the per country allowance of approximately 700 visas annually;³
- The increasing economic volatility in South Africa is said to be the cause of a recent uptick of interest in the EB-5 Program from South African investors; and
- Last week, the Securities and Exchange Commission (SEC) issued a press release in connection with its recent enforcement action against a regional center and its principals for broker-dealer violations arising from success-based compensation paid to U.S.-based persons who assisted with originating investors without broker-dealer registration. The SEC reiterated the importance of maintaining strong fundraising policies.⁴

More on H.R. 6157

In addition to the Continuing Resolution and unlike previous spending bills, H.R. 6157 contains sizeable appropriations including \$68.1 billion to support the

¹ <https://economictimes.indiatimes.com/nri/visa-and-immigration/indians-may-see-jam-on-eb-5-visa-route-to-the-united-states/articleshow/64165330.cms>

² <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2018/visa-bulletin-for-april-2018.html>

³ <https://economictimes.indiatimes.com/nri/visa-and-immigration/indians-may-see-jam-on-eb-5-visa-route-to-the-united-states/articleshow/64165330.cms>

⁴ <https://www.sec.gov/news/press-release/2018-208>

war on terrorism and \$44.6 billion for energy and water as part of the \$674.6 billion discretionary budget for the Department of Defense for fiscal year 2019 (which sum is \$17 billion above 2018). H.R. 6157 fully funds Departments of Defense, Labor, Health and Human Services and Education for fiscal 2019, and make up about two-thirds of the annual appropriations total for the year. President Trump said on Wednesday that he will sign H.R. 6157.⁵

About Polsinelli's EB-5 Team

Polsinelli's EB-5 practice includes highly experienced practitioners in the areas of immigration law, securities and corporate law, fund formation and investment adviser law, real estate acquisition and finance, broker dealer law, securities enforcement and public finance. Members of the group have more than a decade working with the EB-5 Program representing public companies, real estate developers, private companies, and regional centers including with respect to combining EB-5 funding with revenue bonds, development bonds, tax increment financing, historic tax credits, Department of Housing and Urban Development (HUD) loans, low income housing tax credits, new market tax credits, historic tax credits and bridge funding.

For questions regarding this alert and to learn more about how it may impact your business, please contact the author, a member of our **Securities & Corporate Finance** practice, or your Polsinelli attorney.

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⁵ <https://thehill.com/policy/finance/408608-house-passes-854b-spending-bill-to-avert-shutdown>





Learn more...

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