

Government Shutdown Ends – Is Immigration Reform on the Horizon?

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Three days into the government shutdown, Senate Majority Leader McConnell (R-KY) and Senate Minority Leader Schumer (D-NY) took to the Senate floor Monday afternoon to announce an agreement to end the impasse and reopen the government. The Senate voted later in the day 81-18 in support of a short-term continuing resolution (CR) running through February 8, sending it to the House of Representatives where it was quickly approved 266-150. The CR was then signed by President Trump, allowing Federal workers to return on Tuesday.

[Setting the Stage for Immigration & DACA Negotiations?](#)

Democratic support, while not universal, was secured with a promise from Majority Leader McConnell to open bipartisan talks on various immigration issues, including the proposed border wall and the so-called "Dreamers" impacted by President Trump's decision to end the Obama-era Deferred Action for Childhood Arrivals (DACA) program. The commitment from Majority Leader McConnell is for any bipartisan immigration proposal to go through the committee hearing process, debate on the Senate floor, and an open amendment process. If the Senate has not voted on an broad-based immigration agreement by February 8, the agreement is that DACA would be brought before the Senate for an up-or-down vote.

[EB-5 Reauthorization](#)

As the CR will continue current programs and authorizations, the EB-5 immigrant investor program will also extend through February 8, allowing House and Senate leaders to continue their work to reach agreement on a reform and reauthorization of the program. There are now three plausible scenarios for action on EB-5:

(1) **A Broader Immigration Bill?** Reauthorization is included as part of a broad immigration bill. We have been told by senior staff for key congressional negotiators that EB-5 was not part of the bipartisan proposal rejected by President Trump on January 11. However, with the renewed focus on finding a path forward on immigration, it remains a possibility that EB-5 could be included in whatever final agreement is negotiated – although conventional wisdom is that initial immigration bill, which will focus on key issues like DACA and the wall, is not likely to carry EB-5 reauthorization;

(2) **Omnibus Appropriations Vehicle?** Reauthorization is included in an omnibus appropriations package. With the February 8 deadline to fund the government, we could see a large spending bill that includes various other policy matters, such as EB-5. While reauthorization of EB-5 has largely been driven by Republicans in this congress, the 60 vote threshold in the Senate means that Democrats will by necessity have a seat at the table for an omnibus bill and will have some say on policy priorities in any reauthorization of the EB-5 program; or

(3) **Existing Program Extension?** The EB-5 program is simply extended once again by another CR, which could last for a period of weeks, or months, or stretch through the end of the fiscal year on September 30 should no omnibus bill come together, or the program is not included in a broad immigration package. This is the least likely scenario and is not something that is actively discussed on Capitol Hill – yet – but stakeholders should be mindful that it is a possibility.

[Challenges Ahead](#)

The Senate agreement to end the government shutdown certainly adds momentum to the drive toward an immigration bill, however there are potential hurdles that will have to be overcome. During last week's negotiations with President Trump to avert a government shutdown, Minority Leader Schumer had offered to support funding for the proposed border wall in exchange for action on DACA. In the aftermath of the shutdown the Senator rescinded that offer yesterday. President Trump in response tweeted that without funding for the wall he will not support any effort to resolve DACA. To that, add resistance in the House of Representatives, where conservative Republicans are urging Speaker Ryan (R-WI) to push an immigration bill that would be far to the right of any potential bipartisan agreement in the Senate. From the perspective of Senate Democrats, the hope is that if – and "if" is the operative

word – they are able to secure a bipartisan immigration deal in the Senate it will put enough political pressure on House Republicans and President Trump that they have no choice but to support it.

This leaves a number of questions.

If the Senate doesn't approve an immigration bill or hold a vote on DACA by February 8, will Senate Democrats be willing to force another government shutdown?

What happens if the Senate approves an immigration bill or DACA solution, but the House declines to do so?

And, of course, what will President Trump do if he doesn't get funding for his proposed border wall, but is presented with an immigration or DACA bill for signature?

Stakeholders Need to Remain Focused

With action on immigration of some sort more likely than not in the Senate by February 8, stakeholders interested in immigration reform and the EB-5 program should remain focused on advocating for their concerns over the coming days and weeks.

With the House and Senate both in session for only six days before February 8 the next two weeks will be intense, and we will be posting more as the debate unfolds.

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