

How a Government Shutdown Could Impact Immigration Programs and Services

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As of Sept. 29, the U.S. Congress and President Biden have yet to pass and sign into law the spending bills necessary to keep the government funded beyond the end of the fiscal year on Sept. 30, 2023. If no resolution or temporary continuing resolution is agreed upon, a government shutdown could be imminent. This GT Alert reviews key immigration and compliance considerations in the event of a government shutdown.

U.S. Department of Labor (DOL)

Suspension of DOL's Office of Labor Certification (OLC) would potentially be the largest disruption to an immigration program. In the event of a shutdown, OLC would disable its Foreign Labor Application Gateway (FLAG) and Permanent Labor Certification (PERM) systems. This would mean that no new applications – such as Labor Certification Applications (LCA), Prevailing Wage Determinations (PWD), PERM Applications, etc. – could be submitted, and neither pending nor adjudicated applications would be accessible. OLC may allow for flexibilities on filing deadlines; however, this is not guaranteed.

U.S. Citizenship and Immigration Services (USCIS)

USCIS operates primarily on filing fee revenue, so in the event of a government shutdown, most of its functions would continue. However, programs that rely on appropriated funds could be suspended or impacted. These programs include:

- E-Verify
- Conrad 30 J-1 Doctors
- Non-Minister Religious Workers

The EB-5 Immigrant Investor Regional Center Program is authorized through September 2027 and should not be impacted by a shutdown.

However, if DOL shuts down, it would affect the submission of various USCIS visa petitions that require DOL-certified applications, such as LCAs and PERMs.

Specifically, common *nonimmigrant* work visa categories that would be impacted include H-1B and E-3 because they require a certified LCA. Nonimmigrant work visas, such as TN and L-1, which have no LCA requirements, should process normally. Employment-based (EB) immigrant petitions that require a certified PERM, such as EB-3 and some EB-2 petitions, would be affected, while the EB-1A, EB-1B, and EB-1C categories would continue to process normally. Processing of Adjustment of Status (AOS) applications or “Green Card” applications would not be impacted.

In the past, USCIS has allowed flexibilities for extensions or changes of status that were not timely filed if they were “[due to the government shutdown.](#)”

U.S. Customs and Border Patrol (CBP)

CBP operations would continue at U.S. ports of entry. However, filing applications directly at a port of entry may be impacted. A common example of this is a Canadian national applying for a TN visa at a U.S. port of entry.

U.S. Department of State (DOS)

Visa and passport operations, funded by fees, are typically unaffected during a shutdown. For more information about federal agencies impacted by a government shutdown, please visit the following American Immigration Lawyers Association [Practice Alert](#).

Takeaways: Anticipate Delays and Plan Ahead

To recap how a government shutdown could affect U.S. immigration:

Likely to be impacted	Unlikely to be impacted
Key DOL filings <ul style="list-style-type: none">• New applications for LCA, PERM, and PWD• Pending or adjudicated applications for LCA, PERM, and PWD	U.S. visa and passport operations
Certain USCIS programs <ul style="list-style-type: none">• E-Verify• Conrad 30 J-1 Doctors• Non-Minister Religious Workers	EB-5 Immigrant Investor Regional Center Program

<p>Certain DOL-connected visas</p> <ul style="list-style-type: none"> • H-1B • E-3 • EB-3 • EB-2 	<p>Select petitions and filings</p> <ul style="list-style-type: none"> • EB-1A • EB-1B • EB-1C • AOS • Green Cards
<p>Applications directly filed at U.S. ports of entry</p>	<p>Most other CBP operations</p>

If a shutdown occurs, anticipate delays in various immigration processes, whether an agency is directly affected, partially affected, or not at all affected. A shutdown will cause delays throughout different aspects of government operations. Keep a close eye on any expiration dates and filing deadlines that require immediate attention and consult a qualified immigration attorney regarding specific cases and how a government shutdown could impact processing and other timelines.

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