

## What To Expect in the Event of a Government Shutdown: An Immigration Perspective

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Friday, December 21, 2018

There may be a partial government shutdown if Congress cannot come to an agreement on a spending bill before midnight on December 21, 2018. Without an agreement, roughly 25 percent of funding for the federal government will expire. While many agencies will continue to operate during the shutdown, processing delays are likely due to reduced staffing and reliance on other, affected agencies.

The likely impact a government shutdown would have on the departments and agencies that provide immigration-related services are as follows.

### **U.S. Citizenship and Immigration Services (USCIS).**

USCIS is likely to remain open because it is funded, in large part, by filing fees. USCIS will continue to process immigration applications and petitions. Interviews and appointments with USCIS should go on as scheduled. There may, however, be processing delays in situations, such as security checks, in which USCIS relies on other agencies for information if those other agencies responsible for that information are affected by the shutdown.

**U.S. Department of Labor (DOL).** Congress has already funded the DOL for fiscal year 2019, thus operations should be unaffected. Labor condition applications (LCAs), permanent labor certification (PERM) applications, and prevailing wage requests should all carry on as normal.

**U.S. Department of State (DOS).** DOS entities are supported by a combination of federal funding and filing fee payments. Consular operations, domestically and abroad, should continue until filing fee balances are depleted. A lengthy shutdown could drain those funds, however, and result in the suspension of visa processing. Passport processing should continue unless the passport office is located in a federal building closed by the shutdown.

**U.S. Customs and Border Protection (CBP).** Given its law enforcement function, the CBP is considered essential to the nation's security and is generally exempt from government shutdowns. Operations at ports of entry should not be impacted by a shutdown. Additionally, border ports should continue processing visa applications.

**U.S. Immigration and Customs Enforcement (ICE).** ICE also serves a law enforcement function and is generally exempted from government shutdowns. Enforcement and removal functions will likely continue. Additionally, the Student and Exchange Visitor Program (SEVP) is not expected to be impacted by a shutdown.

**Social Security Administration (SSA).** The SSA should continue operations uninterrupted.

**E-Verify.** In the event of a government shutdown, E-Verify will not be accessible. However, employers must continue to complete I-9 forms within three business days after an employee starts work.

**U.S. Postal Service.** Mail delivery is not affected by government shutdowns.



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## Other Considerations

**Government Contractors.** Government contractors may be furloughed during a government shutdown, which can present challenges for those contractors that are also H-1B visa holders. Regulations require that H-1B workers be paid their regular wages, even while in a nonproductive status. Employers may require furloughed H-1B holders to use their accrued vacation time but if the shutdown is prolonged, employers may be required to pay the H-1B workers their regular salaries through the furlough period (or terminate the employment relationship).

**At-Risk Immigration Programs.** In the event of a government shutdown, certain types of immigration filings will be suspended. These include the EB-5 Immigrant Investor Program, the Conrad 30 Waiver Program for J-1 physicians, and the non-minister religious worker program.

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