



Alerts

How a Partial Government Shutdown Would Impact Employers and Business Immigration Services

September 28, 2023

Insights for Employers

U.S. Citizenship and Immigration Services

With a partial government shutdown still potentially imminent, here is an overview of the potential impacts on employers and business immigration services.

The U.S. Citizenship and Immigration Services is a fee-funded agency. If the government does shut down, they will continue processing nonimmigrant and immigrant petitions as usual. The exception to this rule is for certain programs that receive funds through appropriations, such as E-Verify, the EB-5 Immigrant Investor Regional Center Program, Conrad 30 Waiver Program for J-1 physicians, and non-ministerial religious workers. There is the potential for these programs to be suspended or otherwise impacted.

The latest information we have on these programs is as follows:

- The EB-5 Immigrant Investor Regional Center Program should not be impacted by a shutdown as it was authorized through September 30, 2027.
- The Special Immigrant Religious Worker Program will sunset on September 30, 2023, unless a CR or appropriations package is signed into law before that date.
- USCIS has confirmed that employers may continue to use the new alternate document review process for remote Form I-9 document verification if E-Verify is temporarily unavailable due to a government shutdown.
- In the past, when the government reopened, USCIS has accepted late filings of employment-based petitions, provided the petition was submitted with evidence that the primary reason for failing to timely file an extension of stay or change of status request was the government shutdown.

U.S. Department of State

Visa and passport operations within the Department of State are also fee-funded and should not be affected by a government shutdown. However, occasionally, there may be insufficient fees to support operations at a particular post, in which case the posts may limit visa processing to diplomatic visas and "life or death" emergencies.

Attorneys

William B. Schiller

Ian D. Wageich

Service Areas

Immigration

Labor & Employment



U.S. Department of Labor

In the event of a government shutdown, the Department of Labor would cease processing all applications, including applications for Labor Condition Applications for H-1B petitions, Requests for Prevailing Wage Determinations in connection with H-1B, H-2A and H-2B, PERM labor certifications, and Schedule A Nurses cases. Additionally, the Board of Alien Labor Certification Appeals (BALCA) would place their docket on hold. The Office of Foreign Labor Certification has stated that it is considering issuing guidance about flexibilities for employers with filing deadlines, however, no such guidance has been issued to date.

U.S. Immigration and Customs Enforcement

Enforcement and removal operations will continue. The ICE Student and Exchange Visitor Program (SEVP) offices will be unaffected since fees fund SEVP.

CIS Ombudsman

The DHS Office of the CIS Ombudsman would close and not accept any inquiries through its online case intake system.

Congressional Constituent Services

Some congressional offices may be closed during a government shutdown. Specific information can be found by contacting each individual office.

Conclusion

We will continue to monitor the situation and provide further updates in the event of an actual government shutdown. If you have any questions, please contact the authors or your regular Hinshaw attorney.