



October 2013

Impact of the Government Shutdown on Immigration

On Tuesday, October 1, 2013, the U.S. government began a partial shutdown after Congress failed to pass authorization for sufficient funds for government operations. The government shutdown has affected a number of government agencies, including agencies that impact foreign nationals and immigration-related functions. The following is a summary of immigration processes that are (or may be) affected by the government shutdown.

U.S. CITIZENSHIP AND IMMIGRATION SERVICES (USCIS)

The USCIS is charged with processing certain nonimmigrant and immigrant petitions, including adjudicating petitions for nonimmigrant temporary workers (H-1B, O-1, etc.), issuing Employment Authorization Documents (EADs), granting lawful permanent resident status, and granting U.S. citizenship. Because the USCIS is a fee-based agency, it is not currently affected by the government shutdown; however, the shutdown could affect processing times and, because the USCIS does receive some non-fee-based government funding, there is no guarantee that the USCIS can operate indefinitely without appropriations.

DEPARTMENT OF LABOR (DOL)

The DOL has ceased all immigration-related activities due to the shutdown. Consequently, it is not currently accepting or adjudicating Labor Condition Applications (LCAs), which are part of the H-1B, H-1B1, and E-3 processes. Further, the DOL is not currently accepting or adjudicating prevailing wage requests or labor certification applications. As a result, no new H-1B, H-1B1, or E-3 petitions can be filed unless an LCA has already been certified by the DOL, and certain green card processes will be delayed.

U.S. CUSTOMS AND BORDER PROTECTION (CBP)

Most of the employees at CBP are considered essential employees by the U.S. government. Consequently, the majority of its employees and functions are not currently affected by the government shutdown.

VISA PROCESSING

With regard to U.S. consulates and embassies abroad, most are continuing to issue nonimmigrant and immigrant visas. The Department of State (DOS) has indicated that "consular operations domestically and overseas will remain 100% operational as long as there are sufficient fees to support operations." At this time, it is not clear when the DOS will run out of fees to support its consulate operation.

E-VERIFY

The E-Verify site is currently closed due to the government shutdown. According to the Department of Homeland Security (DHS), generally, the "three-day rule" for E-Verify cases is suspended, and the deadline to resolve Tentative Nonconfirmations (TNCs) has been extended for cases affected by the shutdown; however, federal contractors complying with the federal contractor rule should contact their contracting officer to inquire about extending deadlines. Importantly, employers should not take any adverse action against an employee because of an E-Verify interim case status, including while the employee's case is in an extended interim case status due to a federal government shutdown.

SOCIAL SECURITY ADMINISTRATION (SSA)

SSA field offices are open with limited services, however, the SSA is not currently issuing new or replacement social security cards due to the government shutdown.

As evidenced above, while many federal agencies have been affected by the government shutdown, not all immigration functions are currently suspended. We will continue to provide additional information as the full impact of the shutdown becomes clear.

CONTACT US

If you have any questions about the content in this legal update, contact one of the members of our Immigration Practice Group below. [Robinson & Cole's Immigration Practice Group](#) has experienced attorneys who have assisted clients with a wide range of immigration issues.

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