

Government Shutdown and Immigration Impacts 2023

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Once again, the federal budget impasse in Congress is getting closer to a Government shutdown if an agreement is not met before September 30, 2023. If no legislation is passed by that date, then another Government shutdown is inevitable. Last-minute deals and short-term funding agreements have been used in recent years to keep the government afloat, but the threat of a full shutdown given the time remaining should not be discounted.

What impacts would a government shutdown have on immigration services? Generally speaking, the short-term impact is limited in scope as the United States Citizenship and Immigration Services is fee-based and is able to remain functioning during a shutdown. Likewise, the Department of State is an essential government function and would remain largely unaffected as would Customs and Border Patrol. However, with these large agency's shutdowns can affect them in various ways. Programs that are not considered essential could be impacted such as trusted traveler programs, specialized processing for Canadian nationals as well as supporting Consular programs. Long-term shutdowns can lead to larger delays and processing bottlenecks as ancillary federal services close.

The biggest immediate impact of a government shutdown would be the Department of Labor (DOL) which would cease operations. The closure of the DOL has significant impacts as the processing of employment-based labor certifications under the PERM (now FLAG) system would cease. In addition, Labor Certifications to support H1B petitions would be suspended as well.

The immigration court system would also be affected and going by prior shutdowns we could see the courts close except for detained matters. The sheer number of immigration court cases and the stacked docket could lead to further substantial delays.

Another large immigration related program that would be affected by the shutdown would be the E-Verify program. E-verify that allows for online registration of the I-9 process would shut down and functions would cease. In the case that E-verify is not working it does not stop employer's obligation to comply with the I-9 rules.

Employers and individuals should keep themselves aware of developments as we edge closer to September 30, 2023. The key considerations for immigration impacts are:

- H1B transfers and new hires could be affected in October. If possible, employers should aim to file Labor Condition Applications with enough time in September.
- DOL processing of PERM applications, Prevailing wages, etc. will close, employers and employees should monitor potential impacts for later green card processing and Immigrant Petition filings.

- Border processing of TN applications could be affected.
- Delays are likely to increase as staffing and additional DHS support of Agencies will dry up.
- I-9 obligations remain, even if E-Verify is not working.