

UNITED STATES

WHAT A GOVERNMENT SHUTDOWN UNDER TRUMP WOULD MEAN FOR IMMIGRATION



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Lawmakers are down to their final days to reach a budget deal or face a government shutdown. Immigration is one of the key sticking points in negotiations, with President Trump indicating he wants to secure funding for the border wall as part of the appropriations bill.

While a last-minute deal is certainly possible, employers may wish to begin preparing in case government services are suspended. If no deal is reached on the budget or on a temporary spending measure to fund the government while negotiations continue, a number of government functions would be suspended starting Friday.

In the event of a shutdown, the Office of Management and Budget (OMB) will issue final guidance to agencies on functions that will be affected by the lapse in appropriations. Below are some frequently asked questions about how immigration programs would likely be affected in the event of a shutdown.

Will employees and business travelers be able to obtain visas?

The State Department would likely continue processing visas, at least while funds are available. Domestic and overseas consular offices would remain functioning, so long as fees collected from applications are sufficient to support operations. American citizens applying for or renewing passports, however, would be immediately impacted by closures of federal buildings during a shutdown. Depending on the length of any government shutdown, visa and passport processing could be significantly delayed. Applicants are encouraged to file as soon as possible in case of a lengthy shutdown and factor in the possibility of delays.

How would our company's H-1B filings and other U.S. Citizenship and Immigration Services petitions be affected?

USCIS would continue to process petitions, but employers should be prepared for delays. The Department of Labor (DOL) was already funded for fiscal year 2019 in a spending bill passed earlier this year, which means its operations likely would not be affected by a shutdown. Employers would still be able to file Labor Condition Applications, a prerequisite to H-1B, E-3, and H-1B1 filings, including extensions of status and changes of employers for those categories. USCIS would continue to accept and process other immigrant and nonimmigrant petitions, including adjustment of status (green card) applications. Cases that have been selected for administrative processing, however, are likely to face lengthy delays.

Our company has already filed PERM applications. Will they be processed during a shutdown?

Congress has already provided funding to DOL, the agency responsible for processing permanent labor certification (PERM) applications, which means its Office of Foreign Labor Certification would continue accepting and processing immigration-related applications, including PERM applications, Labor Condition Applications, applications for prevailing wage determinations, and temporary employment certifications. However, it is possible that employers will see delays in processing.

Will Canadian employees applying for TN and L visas at the U.S. border be affected?

U.S. Customs and Border Protection officers would continue to process applications at ports of entry, including TN and L applications by Canadian nationals. However, there have been inconsistencies in how these applications are adjudicated at ports of entry, and applicants should be prepared for delays and additional scrutiny.

Will employees be able to apply for Social Security cards, driver's licenses and other ID cards?

The Social Security Administration will not accept applications for Social Security cards or replacement cards during a government shutdown. This could affect eligibility to apply for driver's licenses, as most state motor vehicles departments require a Social Security number to apply for a driver's license.

Will other immigration programs be affected?

Several immigration programs are set to expire Dec. 21, including the E-Verify program, the Conrad 30 waiver for J-1 physicians, the Special Immigrant Religious Workers program, and the EB-5 regional center investor program. If Congress does not reauthorize them by Dec. 21, the programs will no longer be available.