

Immigration Consequences of Potential Government Shutdown

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In light of the continuing debate over the federal budget, we may soon face a federal government shutdown. Yesterday the Senate approved a continuing resolution, passed by the House earlier in the week that will keep the government running until April 8th. Both Democrats and Republicans claimed it would be the last short-term spending measure of its kind. Earlier this month the Senate rejected competing partisan plans for proposed spending cuts, revealing that neither side has a filibuster-proof coalition in support of their budget preferences and will not necessarily be able to push through their own agenda. Thus, it is still possible that we could face a government shutdown.

Shutdowns of this sort affect the entire economy and require the furloughing of thousands of federal employees. Exempted from this furlough are “essential” employees such as those deemed necessary for defense, public health and safety. In 1980, the Office of Management and Budget defined essential government services and personnel as those involved in: ensuring the nation’s continued security (which includes foreign relations matters related to that purpose); providing continued benefits; or conducting activities to protect life and property. This definition was substantially respected during the last government shutdown in 1995-1996.

During the December 16, 1995 to January 6, 1996 shutdown, the most recent and longest in our history, all nonessential immigration services were suspended. According to the Department of State (DOS), consular services experienced severe cuts with staffing in the Visa Office (VO) at 20%. While the VO continued to process emergency cases, routine services practically ground to a halt and the posts acquired significant backlogs. However, DOS also reported that the National Visa Center continued to operate normally, as its staffing and funding was contractual. According to a Congressional Research Service Report, during the last shutdown 20,000 - 30,000 visas went unprocessed each day and 200,000 applications for U.S. passports went unprocessed. In addition, there also were significant furloughs at the Department of Labor (DOL), creating significant backlogs of labor certifications.

What a government shutdown would mean for immigration services this time around remains unclear. However, the current thinking seems to divide such services into three areas: enforcement, fee-based and non-fee-based services. Immigration enforcement such as Immigration and Customs Enforcement (ICE) and Customs and Border Patrol (CBP) probably will be given continued funding throughout a shutdown as “essential” for national security. Fee-based services such as those provided by United States Citizenship and Immigration Services (USCIS) may possibly not be affected as the fees they generate serve as a continued source of revenue. These services will include applications for changes of status, adjustment of status and extension of status. In addition, any agency that is funded by contract may not be affected. However, non-fee-based services such as those provided by DOL and the Executive Office for Immigration Review (EOIR) will probably face significant cuts, and backlogs of labor certifications, labor condition applications (LCAs) and court dates likely will increase. In addition, consular services most likely will experience significant cuts during a shutdown and, therefore, visa processing may be limited to emergency cases as DOS furloughs go into effect.

Should the current stalemate result in a government shutdown, foreign nationals and employers alike should be aware of the potential impact. Most importantly, foreign nationals could experience significant delays in obtaining visas at consulates abroad. Therefore, should foreign nationals require new visas to enter or reenter the U.S., they may wish, if possible, to postpone international travel. A government shutdown also would have a significant impact on applications at the DOL, including labor certifications, such as online PERM filings, and LCAs. Should the online PERM system be affected, employers are advised to mail in applications to secure priority dates for any time-sensitive applications. Employers also should keep in mind that if there are delays in processing LCAs, this will, in turn, delay related H-1B filings.

Precisely what immigration services will be affected by a federal government shutdown remains unclear; however, cuts most likely will be based on what qualifies as “essential,” fee-based, or contractual funding structures. Should a shutdown occur, foreign nationals and employers are advised to prepare for delays, if not a complete suspension of services. Please contact an attorney in the Proskauer Immigration Group if you have any questions.