

U.S. Government Shutdown: Immigration and Visa Consequences for the Business Community

October 1, 2013

The unthinkable is happening, a U.S. government shutdown. What is the impact of this on immigration matters?

Passports

The United States Passport Office will stop processing U.S. passport and passport card applications with the exception of true emergencies, once it runs out of residual funds. What that date might be is unknown. In prior shutdowns, the "true emergency" policy was administered very strictly with waivers granted for "life and death" situations.

Immigrant and non-immigrant visa processing at United States Embassies and Consulates

Embassies and consulates overseas would continue to provide services to American citizens. However, immigrant and non-immigrant visa processing would only continue while funds are still available. Thereafter, only where there is a true emergency.

United States Citizenship and Immigration Service Petitions and Applications

USCIS district offices are reporting that they are due to remain open for services. As USCIS petitions and applications are generally funded by user fees, we anticipate that USCIS will continue to process them. Site visits are also funded by user fees, at least in part, so are also anticipated to continue. However, potential delays are possible, and we will be monitoring this situation closely.

Customs and Border Control (Border Crossing)

Staffing ports of entry is considered an "essential service" and, accordingly, applicants for admission to the United States will continue to be processed. However, we must anticipate that the process will slow considerably and certain applications which are processed at border points, such as those under the North American Free Trade Agreement (NAFTA), might be suspended.

Department of Labor Applications

The Department of Labor has issued a statement to confirm that the Office of Foreign Labor Certification (OFLC) functions are not "excepted" from a shutdown and its employees would be placed in furlough status should a lapse in appropriated funds occur. Consequently, in the event of a government shutdown, OFLC will neither accept nor process any applications or related materials (such as audit responses) it receives, including Labor Condition Applications, Applications for Prevailing Wage Determination, Applications for Temporary Employment Certification, or Applications for Permanent Employment Certification. OFLC's Web site, including the iCERT Visa Portal System, would become static and unable to process any requests or allow authorized users to access their online accounts.

E-Verify

We anticipate that E-Verify processing will be suspended. Of course, employers should continue to complete I-9 forms when hiring, deferring E-Verify processing to when possible.

Immigration and Customs Enforcement (ICE)

As part of the Department of Homeland Security, it is anticipated that ICE will continue to provide operations considered to be law enforcement necessary for safety of life and protection of property as usual.

Executive Office for Immigration Review (EOIR)

Some EOIR court administrators have advised that if there is a government shutdown, the Immigration Courts will be closed except for the handling of 'detained' cases.

The Proskauer Immigration Group will continue to carefully monitor the situation and provide guidance as government policy and procedure becomes available as we expect that there will be changes and revisions.

You should contact your Proskauer immigration professional if you have any questions with reference to individuals who are in the application process, or have been scheduled, or are planning to schedule visa appointments.