

Mobility: Immigration alert

September 2023

United States

United States government set to suffer lapse in funding to begin fiscal year 2024

Executive summary

With just under a week before the federal government's current funding will run out, the United States Congress appears no closer to authorizing more spending in order to avoid a partial shutdown. The federal government will be required to cease all non-essential functions effective 1 October 2023, until funding is ultimately approved by Congress and signed into law by the President. In the event of a shutdown, several U.S. immigration processes with numerous government agencies will be impacted.

Background

Many federal government agencies are funded by appropriations bills that are negotiated and passed by Congress and then must be signed by the President before each fiscal year starts on 1 October. If the funding lapses, each agency will identify its essential functions and will cease all non-essential functions until funding is approved and signed into law.

The U.S. House of Representatives is responsible for passing the appropriation bills, which are then sent to the Senate. On 21 September 2023, negotiations in the House stalled and members were sent home for the weekend. This leaves the House with less than one week to pass a bill that will be approved by the Senate and signed by the President in order to avoid a shutdown. While this is a short timeframe, given the importance of the issue at hand, and provided Congress and the President sign off, there is still time to pass an appropriations bill agreed upon by all.

Analysis

The following federal agencies that play a key role in a variety of U.S. immigration processes are expected to be impacted by a shutdown as follows:

- ▶ U.S. Citizenship and Immigration Services (USCIS): USCIS services are funded by filing fees that accompany most requests for immigration benefits as opposed to government appropriations. The agency is therefore expected to remain operational in the event of a shutdown and continue receiving and processing immigrant and non-immigrant visa petitions, applications for permanent residency, and applications for employment authorization documents.
- ▶ U.S. Department of Labor (DOL): By contrast, all functions DOL performs with respect to U.S. business immigration will cease in the event of a shutdown. Employers will not be able to file Labor Condition Applications (LCAs), a document that is required to sponsor foreign nationals for H-1B, H-1B1, and E-3 work authorization, which will delay sponsoring new hires in those categories as well as seeking extensions of work authorization for existing employees. Employers will be able to continue filing PERM Labor Certification applications by mail (DOL's Foreign Labor Application Gateway (FLAG) website will be non-operational), but DOL will not adjudicate any new or currently pending applications.
- ▶ U.S. Department of State (DOS): DOS consular operations abroad, which include issuing immigrant and non-immigrant visas that permit travel to the United



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States, are expected to continue, subject to local funding considerations.

What this means

During this time of unprecedented delays in the PERM labor certification process, a government shutdown would present yet another barrier to the ability of many foreign nationals to apply for and obtain lawful permanent residence in the United States in a timely manner. DOL is currently taking, on average, 9-11 months to adjudicate pending PERMs, and a government shutdown would likely result in further increasing these processing times.

Further, an inability to obtain LCAs has the potential to significantly disrupt business operations for U.S. companies and put H-1B, H-1B1, and E-3 workers at risk of failing to maintain lawful status through no fault of their own. Constituents are urged to reach out to their representatives to express their concerns over how a government shutdown would impact their business and individual members of their workforce.

Additionally, given the uncertainty of ongoing funding to U.S. consular posts worldwide and the impact of any federal government shutdown, visa issuance may at some point be delayed and/or disrupted at some posts. We recommend you connect with foreign national employees and advise them that there may be a delay in visa processing.

We will continue to monitor and review future developments. For additional information, or if you wish to discuss this further, please contact your EY Law LLP professional.

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EYG no. 008860-23Gbl

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