

Publications

Immigration Alert: Government Shutdown: What Immigration Services are Affected and How to Deal with the Suspension of E-Verify

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Due to the well-publicized impasse between President Trump and Congress, a partial government shutdown is currently in effect. Approximately 25 percent of government functions are shut down. Immigration-related agencies that are impacted by the shutdown include the **Department of Homeland Security (DHS)** and its immigration-related components (**CBP, ICE, USCIS, CIS Ombudsman**) and programs (e.g., **E-Verify** – see below), the **Department of Justice (EOIR)**, and the **Department of State**.

What is Not Affected?

- Most **USCIS** operations, as they are fee-funded. USCIS offices remain open, and all individuals should attend interviews and appointments as scheduled. USCIS will also continue to accept petitions and applications for most benefit requests, with some limited exceptions noted in this [USCIS release](#). H-1B petitions, L-1 petitions, E-2 petitions, O-1 petitions, immigrant visa petitions (Form I-140), and other commonly filed categories are not part of this exception. The **Department of Labor (DOL)** is not impacted by a government shutdown. On September 28, 2018, President Trump signed a minibus appropriations bill funding DOL through the end of September 30, 2019.
- **Customs and Border Protection (CBP)** will continue to review applications for admission at the border. This includes Canadian Citizens applying for admission in TN or L status at a U.S. Port of Entry.
- **Immigration and Customs Enforcement (ICE)** and **Student and Exchange Visitor Information System (SEVIS)** also remain operating during the shutdown.
- According to the [SSA Contingency Plan for FY2019](#), during a shutdown, the **Social Security Administration (SSA)** would “except” 53,000 employees in order to maintain key functions including issuing of original and replacement Social Security number cards.

What is Affected?

In addition to the limited immigration services indicated in the [USCIS release](#), DHS's E-Verify services are suspended because of the federal government shutdown. During the suspension, employers cannot access E-Verify accounts. Specifically, employers cannot complete the following tasks:

- Enroll in E-Verify;
- Create an E-Verify case;
- View or take action on any case;
- Add, delete, or edit any user account;
- Reset passwords;
- Edit company information;
- Terminate accounts; or
- Run reports.

Additionally, employees are unable to resolve E-Verify Tentative Nonconfirmations (TNCs) or access myE-verify.

What Should I Do During the E-Verify Suspension?

The DHS announced that the “three-day rule” for creating E-Verify cases does not apply to cases affected by the suspension of E-Verify. Also, the time period to resolve TNCs will be extended for employees; and the number of days that E-Verify is unavailable will not count toward the number of days allotted to resolve TNCs. DHS will issue additional guidance on these deadlines once E-Verify resumes. Employers with Federal Acquisition Regulation (FAR) E-Verify contracts that may be affected should contact their contracting officer to discuss extending relevant deadlines, as necessary.

An employer's obligation to verify employment eligibility remains in effect during the government shutdown despite the inability to access E-Verify. Employers must still complete Form I-9 no later than the third business day after an employee starts work for pay. Employers should keep track of all new hires during the suspension and add these cases to E-Verify once the system resumes. Employers should not take adverse action against employees who are in an interim case status due to the suspension of E-Verify. During the shutdown, employers should also continue to comply with all other Form I-9 requirements as indicated in the USCIS Employer Handbook and on the [USCIS I-9 Central website](#).

Should you have any questions regarding immigration services or the suspension of E-Verify during the government shutdown, we encourage you to contact your Vorys attorney.