

When the Government Shuts Down: The Impact on E-Verify, I-9's, and Visas

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Government shutdowns seem to be the norm these days. Whether they last 6 days or 60 days, the impact on E-Verify and visas is the same.

Since the partial government shutdown began on Dec. 22, 2018, while lawmakers discuss immigration reform for the future, several key functions of the Department of Homeland Security (DHS) and the Department of Justice (DOJ) are now being affected in ways that touch many individuals and employers.

USCIS: Because the United States Citizenship and Immigration Service (USCIS) is [funded](#) primarily by immigration and naturalization benefit fees charged to applicants and petitioners, the partial shutdown does not affect USCIS's fee-funded activities; namely, the vast majority of [USCIS services](#). Nevertheless, the negative effects of the shutdown can be felt throughout the immigration system.

Immigration Courts: Since the beginning of the federal government shutdown, most Immigration Court hearings have been cancelled. This follows a DOJ [release](#) which stated that for non-detained individuals, docket cases will be reset for a "later date after funding resumes." Because of this directive and cancellations, as of January 11, 2019, the estimated number of hearing cancellations reached 42,726 in less than 3 weeks. It is estimated that for each week the shutdown continues, cancelled hearings will grow by another 20,000, meaning that thousands of individuals are awaiting their day in court.

Temporary Programs: While most employers are not affected by this backlog of cases, there are several services that are affected by a shutdown. These include the following temporary programs that are directly tied to reoccurring re-authorization:

- EB-5 Immigrant Investor Regional Center Program (not the EB-5 Program);
- E-Verify;
- Conrad 30 Waiver Program for J-1 medical doctors;
- Non-minister religious workers.

Below is a description of the programs most relevant to employers, and how employers should proceed in light of the shutdown.

E-Verify and I-9's: [Form I-9](#) is used to verify the identity and employment authorization of individuals hired for employment in the United States. All employers must have a Form I-9 on file for all employees hired after November 6, 1986. Closely related to the Form I-9 filing process is [E-Verify](#), the internet-based system that compares information from Form I-9 to government records to confirm that an employee is authorized to work in the U.S. The E-Verify system, available throughout the U.S., helps employers by verifying the identity and employment eligibility of newly hired employees by electronically matching information provided by employees on the Form I-9 against records available to the Social Security Administration (SSA) and DHS. It is voluntary for most employers, unless the employer has federal contracts or subcontracts that contain the Federal Acquisition Regulation (FAR) E-Verify clause, state legislation mandates the use of E-Verify, or the employer is required to participate in E-Verify as a result of a legal ruling.

E-Verify Services Shut Down: Because E-Verify and E-Verify services are [unavailable](#) in light of the shutdown, this means that employers will not be able to: enroll in E-Verify; create an E-Verify case; view or take action on any case; add, delete or edit any user account; access “myE-Verify” accounts; reset passwords; edit company information; terminate accounts; run reports; or contact Form I-9, E-Verify and myE-Verify support representatives.

DHS Issued Temporary E-Verify Guidance in Light of the Shutdown

Because DHS [recognized](#) that the unavailability of E-Verify services may have a “significant impact on employer operations,” when the shutdown commenced, DHS implemented several key policies including:

- Suspending the “[Three Day Rule](#)” for creating E-Verify cases for cases affected by the unavailability of E-Verify;
- Extending the time period during which employees may resolve Tentative Non-Confirmations (TNCs) (the number of days E-Verify is not available will not count toward the days the employee has to begin the process of resolving their TNCs);
- Mandating that employers may not take adverse action against an employee because the E-Verify case is in an interim case status, including while the employee’s case is in an extended interim case status due to the unavailability of E-Verify.

DHS also assured that it would provide additional guidance regarding “Three Day Rule” and time period to resolve TNC deadlines once government operations resume.

What Should Employers Do?

Even though E-Verify is unavailable, this does not affect the employer’s legal duties to timely complete a Form I-9. This means that the employer must complete Section 2 of the Form I-9 no later than 3 days after the first day of employment.

EB-5 Immigrant Investor Regional Center Program: An [EB-5 regional center](#) is an organization or jurisdiction, public or private, that is designated by USCIS to sponsor capital investment projects for [EB-5 investors](#). An organization or jurisdiction receives a designation as “regional center” by applying through a Form I-924.

However, as USCIS [announced](#), the EB-5 Immigrant Investor Regional Center Program expired at the end of the day on Dec. 21, 2018, due to the government shutdown. This means that all regional center applications and individual petitions are affected, and that USCIS will not accept new Form I-924. Nevertheless, to demonstrate continued eligibility as a designated regional center, regional centers should continue to submit their annual [Form I-924A](#) for fiscal year 2018.

USCIS did make clear however, that it will continue to receive regional center-affiliated Form [I-526](#), Immigrant Petition by Alien Entrepreneur, and Form [I-485](#), Application to Register Permanent Residence or Adjust Status. However, these cases will not be approved during a government shutdown.

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