

Current Shutdown's Impact on Immigration Agencies from DHS

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With annual appropriations for the Department of Homeland Security (DHS) having lapsed on Feb. 14, 2026, immigration stakeholders are again navigating the practical consequences of a DHS-specific shutdown. Despite the current shutdown, most DHS immigration functions continue, but the impact may vary across agencies and programs. U.S. Citizenship and Immigration Services (USCIS) and the Department of Labor (DOL) functions also remain operational.

Big Picture: 'Shutdown' Does Not Mean Stop

During a DHS shutdown, roughly 90% of the department's more than 260,000 employees are required to keep working, often without pay. Many immigration functions are deemed "essential," while others are insulated by separate funding streams such as filing fees or the One Big Beautiful Bill Act (OBBBA). For businesses, that means core adjudications and enforcement activities largely continue, even as certain programs pause.

USCIS: Largely Open with Program-Specific Caveats

Because USCIS is primarily funded by the payment of filing fees submitted with immigration applications, USCIS processing continues during a shutdown. Employers may expect to proceed with routine business immigration filings without disruption.

However, programs that depend on appropriated funds might be vulnerable to disruption:

- **E-Verify Program:** Historically, E-Verify relied on federal funding and was unavailable during government shutdowns. However, during the last government shutdown in October 2025, approximately one week later, E-Verify was restored while the shutdown continued. E-Verify remains operational during the current DHS shutdown. In the event of the system's suspension during a shutdown, alternate I-9 remote document review procedures are available as employers must still complete the I-9 verification steps within the three-day window. USCIS has previously confirmed that employers may continue using the new alternate review process when E-Verify is temporarily unavailable, and there has been no indication that this policy will change. Once the system resumes, cases should be created promptly.

- USCIS Filings: Because USCIS is primarily a fee-funded agency, applications and petitions may continue to be filed and processed. In the past, USCIS has stated that it may excuse late filings for certain immigration benefits if the government shutdown directly caused the delay, such as when other agencies like the DOL temporarily suspended operations. For example, USCIS has accepted late H-1B Form I-129 petitions when the required certified labor condition applications (LCAs) from the DOL could not be obtained on time and included with the filing. In these situations, employers and their counsel may wish to document any shutdown-related obstacles that prevented a timely filing.

For specific programs:

- EB-5 Immigrant Investor Regional Center Program: The EB-5 program continues, as it is authorized through Sept. 30, 2027, and is not impacted by the current DHS funding lapse.
- Special Immigrant Religious Worker (EB-4) Program: While the EB-4 category is tied to appropriations, the president signed into law H.R. 7148, extending the EB-4 non-minister special immigrant religious worker program through Sept. 30, 2026.

US Customs and Border Protection (CBP): Ports Stay Open, But Discretionary Processing May Slow

CBP inspection and law enforcement personnel are treated as essential, so ports of entry remain open and passenger processing continues. However, the Transportation Security Agency (TSA), which is under DHS, is impacted as the partial shutdown stretches into the second week.

- TSA PreCheck: A government funded program that provides expedited airport security screening for low-risk travelers continues to remain operational with no change for the traveling public, despite DHS briefly suspending TSA PreCheck Feb. 21.
- Global Entry: CBP's Trusted Traveler Program that helps speed up the customs process for pre-approved travelers when reentering the United States remains suspended as of Feb. 22. Applications typically filed at the border – such as certain nonimmigrant adjudications or discretionary benefits – may experience delays.

DOL and US Department of State (DOS): Insulated for FY 2026

Not all key immigration agencies are affected by the current DHS funding lapse.

- DOL: The DOL is funded through the remainder of FY 2026. Unlike the last government shutdown in October 2025, PERM processing, prevailing wage determinations, and LCAs may continue under normal operations, absent separate disruptions.
- DOS: The DOS is also funded through FY 2026. Consular posts may remain open and visa processing should continue, although local conditions or operational decisions might create delays.

Immigration and Customs Enforcement (ICE)

ICE employees are considered “essential,” and the agency’s enforcement and deportation operations received a single lump sum of \$29.9 billion from the OBBBA. ICE continues enforcement operations, and the ICE Student and Exchange Visitor Program (SEVP) offices are unaffected since fees fund SEVP. Certain compliance activities that include I-9 audits and Notices of Inspection also continue as compliance obligations do not pause during a shutdown.

Takeaways for Employers and Practitioners

The current DHS shutdown is less about a complete halt and more about targeted disruptions and heightened uncertainty. Employers and immigration practitioners may wish to:

- Continue filing USCIS petitions and applications on normal timelines while documenting any shutdown-related barriers to timely filing.
- Prepare for possible E-Verify outages or delays by training HR on alternate I-9 remote verification procedures and ensuring internal policies reflect the latest USCIS guidance.
- Advise traveling employees and business visitors that ports remain open but discretionary processing at the border may be delayed. Employees may wish to carry complete documentation of their immigration status, especially when traveling internationally.
- Monitor sunset-tied programs and consider accelerated filing strategies where appropriate.

While congressional discussions around DHS funding continue, careful planning may reduce operational disruption for businesses and individuals relying on the U.S. immigration system.