



# GMS Flash Alert

## Immigration Edition

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## United States - Immigration, Labor Authorities Release Fall 2018 Regulatory Agendas

The U.S. Department of Homeland Security (“DHS”) and Department of Labor (“DOL”) have released their Fall 2018 regulatory agendas, proposing new regulations and setting publication dates for previously proposed regulations.<sup>1</sup> While these proposed regulations do not immediately alter any current immigration programs, the proposals provide insight into expected changes and their impact on many different immigration programs, including the B-1, F-1, H-1B, H-4 EAD, and EB-5 programs.

In this *GMS Flash Alert*, we provide a summary of the key proposed regulations and policy changes announced in the DHS and DOL 2018 Fall agendas.

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### WHY THIS MATTERS

Government regulatory agendas outline the priorities of government agencies and the regulatory actions that they wish to take within the upcoming year. The regulatory agendas recently published are clearly in line with the Trump administration’s continued efforts to introduce efficiencies with respect to application submission and processing and to restrict pathways for legal immigration and entry into the United States. Employers and foreign nationals should make themselves aware of the authorities’ plans so that they can strategize accordingly.

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### H-1B/H-4 EAD Programs

- **H-1B Eligibility Requirements:** DHS will propose a revised definition of “specialty occupation” in the H-1B context in an effort obtain the best and brightest foreign nationals. Additionally, the definitions of “employment” and “employer-employee relationship” are expected to be revised in a manner more restrictive for potential H-1B employers. The proposed rule – which has an anticipated publication date of August 2019 – would also impose additional wage requirements for H-1B employees.

- **H-1B Cap Lottery Pre-registration:** The proposed rule seeks to establish an electronic registration program for H-1B Cap-subject petitions whereby petitioners would be permitted to submit a Cap petition only after pre-registering for the H-1B Cap lottery. The agency has not yet provided specific details around the application process, however, this rule is intended to help U.S. Citizenship and Immigration Services (USCIS) manage the intake and selection process for H-1B Cap petitions more efficiently. This proposed rule has an updated anticipated publication date of October 2018. The agency intends to have the pre-registration process in place for next year's FY 2020 Cap season, which begins on April 1, 2019. Given that the federal review process typically takes months to complete, it is unclear whether the rule could be implemented in time.
- **Termination of H-4 Employment Authorization Program:** DHS proposes to rescind employment authorization for certain H-4 spouses.<sup>2</sup> The agency first proposed termination of the H-4 EAD benefit in December 2017 and it has continued to be a priority. A final regulation is expected to be published by mid-2019 and will outline whether previously issued H-4 EADs will remain valid until expiration.

## EB-5 Investor Program

- **EB-5 Program Realignment:** The government is proposing to increase monitoring of the EB-5 program and incentivize investment in rural areas. The anticipated publication date is September 2019.
- **EB-5 Regional Center Program:** The government is proposing to make regulatory changes to the Regional Center program. More specifically, DHS is revising the process for regional center designation, maintenance, and termination. DHS is further assessing the impact of implementing an exemplar filing requirement for all designated regional centers. The anticipated publication date is March 2019.
- **EB-5 Modernization:** DHS proposes to modernize the EB-5 program by increasing the investment amount (currently at USD 500,000) necessary to participate in the program. A further update is expected to be released this month.

## B-1/B-2 Visa Programs

- **B-1 and B-2 Criteria:** The proposed rule will clarify the criteria for nonimmigrants admitted to the U.S. as temporary visitors for business (B-1) or pleasure (B-2), potentially limiting permissible business activities. The anticipated publication date is September 2019.

## Student and Related Visa Programs

- The proposed rule modifies the period of authorized stay for certain F-1 and other nonimmigrants from duration of status (D/S) to a specified end date. This rule is slated for publication in September 2019.
- The proposed rule to increase the Student and Exchange Visitor Program (SEVP) fees now has an updated anticipated publication date of March 2019.

## Green Card Processing

- DHS will propose regulatory changes to improve the efficiency of adjustment of status application processing. These changes are aimed at reducing green card processing times, improving the quality of data provided to partner agencies, reducing the potential for visa retrogression, promoting efficient usage of available immigrant visas, and discouraging fraudulent or frivolous filings. Of particular note is DHS's proposal to eliminate the concurrent filing of Form I-485 with immigrant visa petitions, which would have a significant impact on employment-based green card applicants in the future. This rule is slated for publication in September 2019.

## USCIS Fee Increases

- The agency intends to propose increases to USCIS filing fees. The revised anticipated publication date is February 2019.
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### KPMG NOTE

To reiterate, these agendas do not have any immediate effect on current U.S. immigration programs. In most cases, the proposed regulations will go through the standard administrative process, which normally includes a comment period to allow individuals and organizations to provide feedback. The entire rule-making process can take many months to complete.

KPMG Law LLP is closely monitoring these matters and will endeavor to provide updates as they become available.

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### FOOTNOTE:

- 1 See DHS, "[Agency Rule List – Fall 2018](#)".
- 2 For related coverage, see GMS [Flash Alert 2018-014](#) (January 18, 2018).

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## Contact us

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