



GMS Flash Alert

Immigration Edition

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United States - Immigration Plans on Agencies' Spring 2019 Agendas

The U.S. Department of Homeland Security (“DHS”) and Department of Labor (“DOL”) have released their Spring 2019 regulatory agendas, proposing new regulations and setting publication dates for previously proposed regulations.¹ While these proposed regulations do not immediately impact 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.

Below is a summary of the key proposed regulations and policy changes announced in the DHS and DOL 2019 Spring agendas.

WHY THIS MATTERS

The DHS and DOL plans appear to align with the Trump administration’s preferences for limiting legal immigration and entry into the United States.

Having an understanding and awareness of potential changes to the rules and regulations that impact immigration will allow employers and foreign nationals to better prepare for contingencies and foster continued regulatory compliance.

H-1B/H-4 EAD Program

H-1B Eligibility Requirements: DHS seeks to propose a revised definition of “specialty occupation” in an effort obtain the “best and brightest foreign nationals” with the H-1B program. Additionally, the rule is also expected to revise the definitions of “employment” and “employer-employee relationship,” in a manner more restrictive for H-1B employers, potentially limiting placement of H-1B workers offsite at third-party locations. The rule also proposes additional

requirements for wages paid to H-1B employees. This proposed rule has an anticipated publication date of August 2019.

USCIS Fee Increases Including an H-1B Cap Lottery Pre-registration Fee: The agency intends to propose increases to USCIS filing fees. The revised anticipated publication date is July 2019. The new fee schedule will likely include an H-1B cap electronic registration fee.

In January 2019, the DHS announced a new rule establishing an electronic registration program for H-1B Cap-subject petitions whereby petitioners are permitted to submit Cap petitions only after pre-registering for the H-1B Cap lottery (for prior coverage, see GMS [Flash Alert 2019-018](#), February 1, 2019). In a new development, the agency has now proposed instituting a fee for the registration requirement for employees seeking to file H-1B Cap-subject petitions, in addition to existing government filing fees for H-1B petitions.

Termination of H-4 Employment Authorization Program: DHS proposes to rescind employment authorization for certain H-4 spouses. This proposal was first introduced back in December 2017 and termination seems to be an agency priority. A final regulation is expected to be published later this year and will outline when the H-4 EAD benefit will sunset as well as whether currently-valid H-4 EADs will remain valid for their entire duration. (For related coverage, see GMS [Flash Alert 2019-043](#), March 13, 2019.)

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 updated anticipated publication date is March 2020.

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 updated anticipated publication date is March 2020.

EB-5 Modernization: DHS proposes to modernize the EB-5 program by increasing the investment amount (currently at \$500,000) necessary to participate in the program. The proposed rule is currently under agency review with an anticipated publication date of May 2019.

B-1/B-2 Visa Programs

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

Student and Related Visa Programs

Period of Authorized Stay for Certain Students/Academics: 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 was first slated for publication in September 2019, and now has an updated publication date of February 2020.

Student and Exchange Visitor Program (SEVP) Fees: The proposed rule to increase Student and Exchange Visitor Program (SEVP) fees paid by F, M, and J nonimmigrants and by schools admitting foreign students is expected to take effect June 2019.

Green Card Processing

Adjustment of Status Application 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 will have a significant impact on employment-based green card applicants in the future. This rule is slated for publication in September 2019.

KPMG NOTE

Government regulatory agendas do not have an immediate effect on current programs, but instead outline the priorities and regulatory actions respective government agencies expect to complete within the upcoming year.

In most cases, the proposed regulations will go through regular administrative procedures. This normally includes a comment period to allow individuals and organizations to provide feedback, though this is not always guaranteed. The proposed rules would not take effect until the agency completed the regulatory approval process, which can take several months or more to be completed.

Our office is tracking these matters closely. We will endeavor to keep readers of *GMS Flash Alert* posted on any important developments as and when they occur.

FOOTNOTE:

1 To see the Office of Information and Regulatory Affairs’ webpage for the DHS/DOL Rule List for Spring 2019, [click here](#).

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Contact us

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