

# GMS Flash Alert

## Immigration Edition

2020-159 | April 8, 2020



# United States - Summary of Immigration, Travel Changes in Response to COVID-19

The COVID-19 pandemic has disrupted the ability of workers to cross borders around the world. This *GMS Flash Alert* provides an overview of the measures that various agencies of the United States government have taken to address the new restrictions on cross-border travel, including the suspension and alteration of immigration services and procedures.

## WHY THIS MATTERS

The actions taken by these U.S. agencies are intended to help combat the spread of COVID-19 in the country and to bring relief to individuals and their employers. Each of the five sections below explains the direct impact that the respective agency's measures will have on employers and employees.

## U.S. Citizenship and Immigration Services (USCIS)<sup>1</sup>

- USCIS has extended deadlines by 60 calendar days for responses to all Requests for Evidence (RFE), Notices of Intent to Deny (NOID), Notices of Intent to Terminate (NOIT) regional investment centers, and Notices of Intent to Revoke (NOIR) issued between March 1, 2020 and May 1, 2020. In addition, any Form I-290B, *Notice of Appeal of Motion*, received up to 60 calendar days from the date of the decision will be considered by USCIS before it takes any action.
  - **Why this matters:** Employers and individuals will have more flexibility to reply to an RFE, NOID, NOIR, NOIT or appeals and motions to re-open for any request, notice or decision dated between March 1, 2020 and May 1, 2020, inclusive.
- USCIS has suspended premium processing for all I-129 and I-140 petitions. USCIS has not indicated when premium processing is expected to resume.
  - **Why this matters:** This temporary suspension includes all E-1/2, H-1B, H-2B, H-3, L-1, LZ, O-1/2, P-1/2/3, Q-1, R-1, and TN petitions. It also includes EB-1, EB-2 and EB-3 petitions. This suspension could result in gaps in work authorization, especially for those individuals who are relying on the expedited adjudication of their employment-based I-140 petitions to secure H-1B extensions beyond the six-year period.

- USCIS offices have suspended in-person services, including interviews, biometric collection, naturalization ceremonies, and InfoPass appointments, until at least May 3, 2020.
  - **Why this matters:** These closures will delay the processing of employment-based and family-based adjustment of status applications and some applications for employment authorization documents. USCIS has announced that it will reuse previously-submitted biometrics to process employment authorization document extension requests during the temporary closures.
- USCIS will accept electronically reproduced signatures on forms for the duration of the national emergency.
  - **Why this matters:** While this change provides some flexibility to employers and applicants in filing their petitions and applications, USCIS still only accepts hard copies of most types of petitions and applications. In addition, USCIS will not accept e-signatures or digital signatures. Forms must be signed in ink and copies of those signatures can be forwarded to USCIS. The original forms containing the “wet” signature must be retained because USCIS may request them at a later date.

## U.S. Customs and Border Protection (CBP)<sup>2</sup>

- The United States has closed its northern and southern borders to all non-essential traffic – defined as tourism or recreational travel – until at least April 20, 2020. These restrictions only apply to land and sea ports of entry.
  - **Why this matters:** CBP will not admit tourists or non-essential business travelers if they seek admission to the United States by a land or sea port of entry. While CBP offices at some ports of entry have confirmed that they are not denying admission to other applicants for being in a non-essential role, it has been observed that other offices have been inconsistent with the application of this new rule. This has led to an increase in erroneous rejections.
- From March 19, 2020 to at least May 1, 2020, the Department of Homeland Security (DHS) has suspended operation of all CBP Trusted Traveler Program Enrollment Centers.
  - **Why this matters:** This closure includes all public access Global Entry, NEXUS, and SENTRI enrollment centers, and FAST enrollment locations, and temporarily bars individuals from updating their information or completing their interviews at these locations. Conditionally-approved applicants who seek an enrollment center interview will need to reschedule after May 1, 2020.
- DHS has postponed the requirement for individuals to obtain REAL ID-compliant identification to board domestic flights and to enter federal facilities until October 1, 2021.
  - **Why this matters:** The REAL ID Act requires U.S. states to issue state driver’s licenses and non-driver identification cards that meet enhanced security standards, and requires individuals to present REAL ID-compliant identification documents for domestic air travel and admission to federal facilities. DHS had set a final deadline of October 1, 2020, for states to be in compliance of the REAL ID Act, but this deadline has been further extended because many state motor vehicle departments are closed during the national emergency.
- Since March 16, 2020, some ports of entry and CBP Deferred Inspection offices are adjudicating “Satisfactory Departure” requests by individuals in the United States under the VWP/ESTA program to extend their period of admission by up to 30 days.

- **Why this matters:** Individuals who are in the United States under the VWP/ESTA program and are reaching the end of their authorized period of stay but are unable to depart due to COVID-19, can request Satisfactory Departure for up to 30 days. If the individuals are able to depart the United States within the additional time allotted to them, they will be deemed to have departed without overstaying their authorized admission period.
- President Trump has issued proclamations suspending the entry of individuals who were physically present in the United Kingdom, Ireland, the Schengen Area, Iran, and the People’s Republic of China during the 14-day period preceding their entry or attempted entry into the United States.<sup>3</sup> These restrictions do not apply to U.S. citizens or lawful permanent residents, their spouses and some immediate family members, and certain foreign nationals.
  - **Why this matters:** With limited exceptions, foreign nationals will be barred from entering the United States if they have been physically present in one of the listed countries. These travel restrictions will remain in place until terminated by President Trump, and there is currently no estimate on when they will end. Further, countries may be removed from or added to the list depending on the progression of the COVID-19 pandemic globally.

## Immigration and Customs Enforcement (ICE)<sup>4</sup>

- Employers may now complete an I-9 verification using video, e-mail or fax review of their employees’ work authorization documents. When normal operations resume, the employer must verify the individual and their documents within three business days. This accommodation only applies when an employee cannot physically come into the office due to the COVID-19 emergency.
  - **Why this matters:** This relaxation in I-9 verification only defers the in-person physical inspection requirement on a temporary basis. A new hire still must complete Section 1 of the Form I-9 on or before the first day of employment. Employers still must complete Section 2 within three business days of hire, regardless of whether they inspect documents in-person or remotely.
- E-verify employers must still create new cases for new hires within three business days of the date of hire; however, the allotted timeframe to resolve a tentative non-confirmation (TNC) response is extended.
  - **Why this matters:** While E-verify is not relaxing the three-day deadline for initiating new cases, it is providing some flexibility when an E-verify query is delayed due to the COVID-19 crisis. In such cases, employers can write “COVID-19” as the basis for the delay in the system. Employees are also given more time to resolve a TNC due to Social Security Administration closures. Employers cannot take adverse action against an employee whose E-verify case is in interim status.

## U.S. Department of State (DOS)

- U.S. consulates and embassies have suspended routine consular services, cancelled routine nonimmigrant visa appointments, and reduced immigrant visa appointments until further notice.<sup>5</sup>
  - **Why this matters:** Individuals requiring visas to visit, work, or study in the United States will not be able to apply for their visas until the consulates and embassies re-open. In addition, foreign nationals who are already in the United States can currently only extend their non-immigrant status by filing an extension with USCIS.

## U.S. Department of Labor (DOL)

- From March 25, 2020 to June 30, 2020, the Atlanta National Processing Center will issue PERM labor certification documents electronically.<sup>6</sup>

- **Why this matters:** The electronic issuance of these documents cuts down the wait time between when a PERM labor certification application is certified and delivered to the employer or its attorney. However certified PERM application still require original “wet” signatures before they can be forwarded to USCIS.
- DOL will extend the response time for certain inquiries related to prevailing wage determinations and PERM labor certification applications. Where a deadline for these inquiries falls between March 13, 2020 and May 12, 2020, DOL will automatically extend that deadline to May 12, 2020.
  - **Why this matters:** This extension applies to requests for audit documentation; a response to a Notice of Deficiency; submissions of recruitment reports; business verification and sponsorship documentation; supervised requirement requests; requests for reconsideration of a prevailing wage determination; and any other request for information issued by the Office of Foreign Labor Certification containing a due date.
- DOL has extended the 180-day PERM recruitment window by 60 days for all filings that occur by May 12, 2020. DOL is also expanding the 180-day window for posting a “Notice of Filing” by an additional 60 days.
  - **Why this matters:** Under the regulations, employers filing a PERM labor certification application must begin recruitment measures no more than 180 days before filing. In addition, employers must notify their workforce of the intention to file a PERM application by physically posting a Notice of Filing no more than 180 days before submitting the application with DOL. With these new accommodations, DOL will accept PERM labor certification applications even if the Notice of Filing was posted and recruitment began up to 240 days before filing, provided that recruitment began between September 15, 2019 and March 13, 2020, and the ultimate PERM filing occurs by May 12, 2020.
- DOL has also relaxed its rules on posting the Notice of Filing of a Labor Condition Application (LCA) up to 30 calendar days after the H-1B, H-1B1 or E-3 worker begins work at the new worksite location.
  - **Why this matters:** This is a significant change in the current regulations which require that notice be made on or before the worker changes worksites.

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## FOOTNOTES:

- 1 For prior coverage, see GMS [Flash Alert 2020-128](#) (30 March 2020). For USCIS alerts, including COVID-19 alerts, see <https://www.uscis.gov/news/alerts>.
- 2 For prior coverage, see GMS [Flash Alert 2020-110](#) (25 March 2020); see Closure of Trusted Traveler program enrollment centers.
- 3 [Presidential proclamation restricting entry of foreign nationals from certain countries](#).
- 4 For prior coverage, see GMS [Flash Alert 2020-095](#) (March 23, 2020). See [USCIS FAQs on Temporary Policies for Form I-9 and E-Verify](#).
- 5 See the State Department’s [COVID-19 page](#).
- 6 See NAFSA [OFLC to Issue Electronic PERM Labor Certifications in Response to COVID-19](#).
- 7 See [DOL COVID-19 FAQs – for extensions and relaxed LCA requirements](#).

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