



GMS Flash Alert

Immigration Edition

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United States - Government Agencies Release Fall 2019 Regulatory Agendas

The U.S. Department of Homeland Security (“DHS”) and Department of Labor (“DOL”) have released their Fall 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, L-1, and EB-5 programs.

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

WHY THIS MATTERS

International assignment program managers and immigration counsel should be cognizant of the continuing efforts by the U.S. government to restrict legal immigration and entry into the United States and their ability to bring workers into the United States as easily as has been the case and make plans in respect of bringing employees into the U.S. accordingly.

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.

New Changes for L-1 Program

DHS is proposing to make a number of changes to the L-1 program. Unlike the H-1B program, the L-1 program is not currently subject to wage requirements. As one of the proposed changes to the L-1 program, DHS is expected to impose a wage obligation on L-1 employers. The nature of the wage obligation remains unclear at this time. Additionally, the DHS is proposing to revise the definition of “specialized knowledge” for the purpose of L-1B visa classification, and to clarify the definition of L-1 employment and employer-employee relationship, which will likely limit offsite placement of L-1 employees.

These proposed rules have an anticipated publication date of September 2020.

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H-1B/H-4 EAD Program

H-1B Eligibility Requirements: DHS continues to propose a revised definition of “specialty occupation” in an effort to 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 now has an anticipated publication date of December 2019.

Termination of the H-4 Employment Authorization Program: DHS is continuing to propose rescinding employment authorization for certain H-4 spouses. This proposal was first introduced in December 2017 and termination seems to be an agency priority. A final regulation is now expected to be published in March 2020 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 continuing to propose an increase in the monitoring of the EB-5 program and incentivize investment in rural areas. The updated anticipated publication date is September 2020.

EB-5 Regional Center Program: The government is continuing to propose 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 August 2020.

EB-5 Modernization: DHS continues to propose a rule 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 updated anticipated publication date of September 2020.

B-1/B-2 Visa Programs

B-1 and B-2 Criteria: DHS is continuing to propose a rule that 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 updated anticipated publication date is now March 2020.

Student and Related Visa Programs

DHS continues to propose a rule that 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 continues to target a publication date of February 2020.

Increase in Consular Filing Fees

DHS seeks to increase consular filing fees for nonimmigrant and immigrant visa applications. The proposed fee rule was originally slated for publication for July 2019. The updated anticipated publication date is November 2019.

Green Card Processing

DHS continues to 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 now slated for publication in April 2020.

KPMG NOTE

The Fall 2019 regulatory agendas published by the DHS and DOL appear to continue the current U.S. government’s efforts to restrict legal immigration and entry to the U.S. and raise the costs related thereto.

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.

These proposed regulations will most likely 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 See the Fall 2019 regulatory agendas, [click here](#).

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Contact us

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