

GMS Flash Alert



Immigration Edition

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United States - Summary of President Biden's Immigration Actions So Far

This *GMS Flash Alert* summarizes key actions taken by U.S. President Joseph R. Biden on his first day in office as he sets in motion critical aspects of his immigration platform.

Immigration was a major topic throughout President Biden's election campaign, which set the foundation for its future legislative agenda for comprehensive immigration reform.¹ In keeping with the promises made during the election, President Biden has thus far taken several actions affecting immigration policy and procedures.

WHY THIS MATTERS

One key action freezes, delays, and requires review of the previous administration's policies, including a number of newly-published and proposed regulations that would restrict the ability of employers to hire and retain foreign talent. Other actions revoke prior discriminatory policies that impacted foreign nationals and their ability to travel and work in the United States.

U.S. employers should pay close attention to the changes taking place so they can strategize accordingly to address workplace planning needs as well as to foster continued immigration compliance.

White House Issues Memo Freezing Regulations in Process for Additional Review

President Biden has directed all federal agencies to freeze any rule that has either not taken effect or has yet to be finalized, providing the incoming administration a chance to review.² The memo further directs the agencies to immediately withdraw any newly-finalized rules that have not yet been published in the *Federal Register*. For rules that have been published in the *Federal Register*, agencies were directed to consider postponing the rules' effective dates for 60 days and providing a 30-day public comment period for feedback from the community.

KPMG NOTE

The regulatory freeze by the Biden Administration will likely impact multiple rules and proposed policies from the former Administration under President Donald Trump relating to the H-1B visa program. The freeze may delay the implementation of the recently-published regulation seeking to modify the [H-1B lottery process](#) for Cap-Subject H-1B Petitioners, moving from a random selection process to a salary-based selection process.³ It may also delay the implementation of the Department of Labor [prevailing wage final rule](#), published on January 14, 2021 (see [GMS Flash Alert 2021-022](#), 15 January 2021), which increased the minimum wage requirements for the PERM labor certification program as well as for certain nonimmigrant visa classifications.⁴ Further, multiple proposed DHS rules outlined by the outgoing Trump Administration in “Strengthening the H-1B Nonimmigrant Visa Classification Program,” that sought to restrict the definition of “specialty occupation” (for prior coverage, see [GMS Flash Alert 2020-481](#), December 4, 2020); limit third-party placement of H-1B workers to one-year increments; redefine the employer-employee relationship; and impose burdensome requirements on H-1B petitioners and its third party clients, may never come into effect.⁵ (For background coverage, see the following issues of *GMS Flash Alert*: [2020-424](#) (7 October 2020) and [2020-396](#) (10 September 2020).)

Proclamation Ending Discriminatory Bans on Entry to the United States

President Biden signed an executive order repealing former President Trump’s [executive orders](#) that prevented certain individuals from entering the United States – from primarily Muslim countries, and certain African countries.⁵ (For prior coverage, see [GMS Flash Alert 2018-091](#), June 29, 2018.) The first proclamation, known colloquially as the “Muslim Ban,” bars nationals from Iran, Libya, North Korea, Somalia, Syria, Venezuela and Yemen. The second of former President Trump’s proclamations to be repealed involved the suspension of immigrant and diversity visas for nationals of Eritrea, Kyrgyzstan, Myanmar, and Nigeria and suspended diversity visas for nationals of Sudan and Tanzania.

KPMG NOTE

President Biden’s order will direct the State Department to restart visa processing for the affected countries, including for applicants stuck in the waiver process. Foreign nationals in the impacted countries will soon be able to book an appointment to obtain a visa to travel to the U.S. or avail of other services provided by the embassies and consulates.

Preserving the Deferred Action for Childhood Arrivals (DACA) Program

President Biden signed an executive order instructing the Secretary of Homeland Security, in consultation with the Attorney General, to take all actions to preserve and fortify DACA.⁶ The DACA program, initiated by the Obama-Biden Administration in 2012, provides immigration protections for certain undocumented immigrants brought into the United States as children. (For prior coverage, see [GMS Flash Alert 2020-493](#), 11 December 2020.)

KPMG NOTE

President Biden's order provides further assurances for the participants of the program, to enable them to seek lawful employment in the United States without the threat of deportation or face other negative consequences. This proclamation also gives potential and current employers of DACA recipients assurance that the program will likely continue throughout the Biden Administration.

Next Steps

KPMG LLP Law in Canada is tracking this matter closely. We will endeavor to keep readers of *GMS Flash Alert* posted on any important developments as and when they occur.

FOOTNOTES:

- 1 [The Biden Plan for Securing Our Values as a Nation of Immigrants | Joe Biden for President: Official Campaign Website.](#)
- 2 [Regulatory Freeze Pending Review | The White House.](#)
- 3 *Federal Register*: [Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H-1B Petitions](#).
- 4 [Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States \(dol.gov\)](#).
- 5 *Federal Register*: [Strengthening the H-1B Nonimmigrant Visa Classification Program](#).
- 6 [Proclamation on Ending Discriminatory Bans on Entry to The United States | The White House.](#)
- 7 [Preserving and Fortifying Deferred Action for Childhood Arrivals \(DACA\) | The White House.](#)

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Contact us

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