

GMS Flash Alert

Immigration Edition

2021-097 | March 30, 2021



United States - Summary of Recent Immigration Developments

Within the last month, there have been several updates impacting U.S. immigration. This *GMS Flash Alert* summarizes recent policy changes and provides an overview of the following topics:

- U.S. Citizenship and Immigration Services (USCIS) extension of existing COVID-19 accommodations on RFEs, NOIDs, appeals, and other responses through June 30;
- Department of Labor proposal to extend the delay of the regulation increasing PERM and H-1B wage minimums;
- Extension of the U.S.-Canadian non-essential travel ban to April 21, 2021; and
- The Department of State's amendment of the criteria for National Interest Exceptions to the regional COVID-19 travel restrictions.

WHY THIS MATTERS

As the Biden administration continues to implement its immigration reform platform, employers and foreign workers should keep apprised of ongoing policy changes that impact international travel as well as employer's ability to hire and retain foreign talent.

USCIS Extends Existing COVID-19 Accommodations on RFEs, NOIDs, Appeals, and Other Responses through June 30, 2021

In light of the ongoing COVID-19 pandemic, the USCIS has extended the deadline for filing responses to agency-issued requests and notices on applications for immigration-related benefits. The USCIS will allow an additional 60-calendar

days after the response due date set in the request or notice before taking any action. The additional flexibility applies to requests for evidence (RFEs), continuations to request evidence (N-14), notices of intent to deny (NOIDs), notices of intent to revoke (NOIRs), notices of intent to rescind, and notices of intent to terminate regional investment centers, and filing date requirements for Form I-290B, *Notice of Appeal or Motion*.¹ The extended response due dates allow employers and applicants seeking immigration benefits additional time to gather information in order to prepare a response to the USCIS request.

Department of Labor Proposes to Extend Delay of Regulation Increasing PERM and H-1B Wage Minimums

On January 14, 2021, the U.S. Department of Labor (DOL) published a revised prevailing wage rule, *Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States*, increasing the minimum wage requirements for H-1B, E-3, and H-1B1 nonimmigrant cases and the PERM labor certification program.² On March 12, 2021, the DOL announced delaying the effective date of this final rule which seeks to modify the computation of prevailing wage levels.³ The DOL has proposed delaying the effective date of the rule by 18 months, to November 2022, to allow the agency additional time to consider the legal and policy issues raised by the rule, as well as to provide the public an opportunity to comment on the rule's impact.⁴

Extension of U.S.-Canadian Non-Essential Travel Ban to April 21, 2021

On March 19, 2021, the Secretary of Homeland Security (Secretary) announced his decision to continue to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border.⁵ Such travel will be limited to "essential travel," thus, as noted in our prior report, those who travel across the land borders must be prepared to explain how their work can be defined as essential and have documentation in support of such statements to present to U.S. Customs and Border enforcement officials.⁶

Department of State Amends Criteria for National Interest Exceptions for Travelers from Schengen Area, United Kingdom, and Ireland

On March 2, 2021, the U.S. Department of State rescinded the previous policy⁷ on categories eligible for a national interest exemption (NIE) determination, that allowed certain foreign nationals and their dependents subject to the COVID-19 regional travel bans, to enter the United States.⁸ Under the new policy, the NIE determination no longer explicitly covers certain technical experts and specialists, senior-level managers and executives, treaty-traders and investors, professional athletes, and their dependents. The updated NIE determination requires travelers to demonstrate they will provide "vital support of critical infrastructure sectors as defined by the Department of Homeland Security or critical infrastructure linked supply chain."⁹ The new standard for NIE issuance is considered to be more restrictive than the State Department's previous NIE eligibility criteria. The Department of State will continue to grant NIEs for qualified travelers seeking to enter the United States for purposes related to humanitarian travel, public health response, and national security.

KPMG NOTE

KPMG Law LLP in Canada 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.

FOOTNOTES:

- 1 For prior coverage, see the following issues of *GMS Flash Alert*: [2020-218](#) (May 5, 2020) and [2020-128](#) (March 30, 2020).
- 2 For prior coverage, see *GMS Flash Alert 2021-022* (January 15, 2021).
- 3 See *Federal Register*, Vol. 86, No. 47, Friday, March 12, 2021, Rules and Regulations, Department of Labor, "Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Immigrants and Non-Immigrants in the United States; Delay of Effective Date."
- 4 See: [*Federal Register: "Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Immigrants and Non-Immigrants in the United States: Proposed Delay of Effective and Transition Dates."*](#)
- 5 See: [*Federal Register: "Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Canada."*](#)
- 6 For prior coverage, see *GMS Flash Alert 2020-110* (March 25, 2020).
- 7 To review the presidential proclamation issued on December 31, 2020, [click here](#). For prior coverage on the Trump Administration's April 22, 2020 entry suspension for certain immigrants and June 22, 2020 entry suspension for certain nonimmigrants, read the following issues of *GMS Flash Alert*: [2020-198](#) (April 27, 2020) and [2020-294](#) (June 23, 2020).
- 8 For guidance on national interest exceptions to the nonimmigrant entry restriction, read [*GMS Flash Alert 2020-363*](#) (August 20, 2020).
- 9 See: U.S. Department of State, Bureau of Consular Affairs, "[National Interest Exceptions for Certain Travelers from the Schengen Area, United Kingdom, and Ireland \(state.gov\)](#)."

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Contact us

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