

One Minute Memo®



DHS Releases Regulatory Agenda for 2018 - Major Changes Possible for H-1B, H-4, and F-1 Visa Holders

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Seyfarth Synopsis: The Department of Homeland Security (DHS) published its regulatory plan for 2018, which aligns with President Trump's Executive Order, *Buy American Hire American*.

Although the specifics of each proposed rule will remain confidential until published in the Federal Register, the Regulatory Agenda does provide insight on what is likely ahead. Changes to the existing visa programs will be accomplished through a notice and comment period, and will not become effective immediately.

H-1B Cap Lottery Pre-Registration and Selection

DHS will propose a rule that would require all H-1B petitioners to pre-register for the H-1B lottery. Only those petitioners that have been selected in the lottery could then submit H-1B petitions for that fiscal year.

As introduced in the *Buy American Hire American* Executive Order, DHS is also expected to propose a priority system for the allocation of H-1B visa numbers. Priority would be given to the beneficiaries that DHS deems to be the most highly skilled and also the highest paid. (Potential Publication Date: February 2018)

H-1B Eligibility

The proposed rule would revise the definition of "employer-employee relationship" and add new requirements designed to ensure that employers pay appropriate wages to H-1B workers. In addition, the rule is expected to raise the standard on what constitutes a specialty occupation with the stated goal to "increase the focus on truly obtaining the best and brightest." (Potential Publication Date: October 2018)

Termination of H-4 Work Authorization

DHS will propose the elimination of the February 2015 regulation permitting certain H-4 spouses to apply for employment authorization. (Potential Publication Date: February 2018)

Revisions to Practical Training for Foreign Students

Immigration and Customs Enforcement (ICE) may issue a proposed rule to reform the practical training programs for foreign students. Revisions will likely include additional employer obligations and possibly a rescission or limitation of the Obama Administration's extension of STEM Optional Practical Training from 17 to 24 months. (Potential Publication Date: October 2018)

Summary

DHS's Regulatory Agenda for 2018 contains many changes that could greatly affect employers' business immigration programs as they pertain to individuals in H-1B, H-4 and F-1 status. Although some of these proposed rules could be introduced as early as February 2018, the rules must first go through a notice and comment period followed by a formal approval process that will take many months to pass. Seyfarth Shaw LLP will closely monitor these developments.

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