

Immigration Policy Updates

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Policy Alert

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Immigration continues to be a topic of discussion in Washington, and the landscape of immigration law may change, if members of Congress and the Administration can agree on bipartisan solutions. Below you will find a summary of recent immigration policy developments and what to expect in the near future:

- The House Judiciary Committee is considering acting on legislation in several areas before the August recess.
1. Following the Administration's rescission of the Deferred Action for Childhood Arrivals (DACA) program and termination of the Temporary Protected Status (TPS) program for individuals from several countries, legislation is being drafted to provide relief for the "Dreamers" and those with TPS who have been in the United States for a significant period of time. Termination of both programs has been enjoined by federal district courts, so the programs continue to function, but it is possible that the Administration's actions will be upheld by appellate courts or the Supreme Court. A legislative solution would provide long-term immigration status to both groups of individuals. In connection with the legislation being drafted, the House Judiciary Committee will hold a hearing at 10:00 a.m. on March 6 titled "Protecting Dreamers and TPS Recipients."
 2. Legislation to remove the per-country caps on employment-based immigrant visas ("green cards") is being considered. Currently, no more than seven percent of employment-based green cards can be granted to citizens of the same country, which has created significant backlogs for citizens of several countries, especially those from China and India. Several industries have been concerned about this provision, including the IT and the nursing industry, particularly given the shortage of nurses domestically.
 3. Legislation is being drafted to reform the agricultural guest worker program (H-2A). While there is no numerical limitation on H-2A visas, U.S. employers' need for agricultural guest workers can be very time-sensitive due to farming schedules, and the application process is often difficult to navigate and slow. It is unclear whether this effort, like those in the past, will include any E-Verify requirements, which would make it mandatory to verify the employment eligibility of any new agricultural guest workers in a federally maintained database.

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4. Legislation is being considered to provide certain Irish nationals access to unused E-3 nonimmigrant visas. The E-3 visa classification applies to nationals of Australia, and the annual limit of 10,500 E-3 visas has never been reached since the program's inception in 2005.
 5. Legislation is being considered to add Portugal to the list of countries eligible for E-1 and E-2 visas, which would allow citizens of Portugal to qualify for temporary visas in the United States as treaty traders (individuals involved in trade between the two countries) or treaty investors (individuals operating or working for businesses owned by citizens of the treaty country).
- The Department of Homeland Security (DHS) sent to the Office of Management and Budget (OMB) at the White House a proposed rule that would eliminate eligibility for employment authorization for certain H-4 dependent spouses (spouses of H-1B visa holders). This would reverse an Obama Administration rule and affect approximately 90,000 H-4 visa holders. There is no designated deadline by which the White House must decide whether to proceed with the rule.
 - The DHS has also sent a final rule to the OMB regarding the EB-5 investor visa program – a program that allows foreign investors who meet certain criteria to qualify for a green card. The proposed regulation was originally released in the final days of the Obama Administration. The proposal raises the direct investment threshold from \$1 million to \$1.8 million and the “targeted employment areas” (TEA) investment threshold from \$500,000 to \$1.35 million. The rule also reconfigures the calculation for “targeted employment areas,” investment into which allows an investor to be eligible under the lower investment threshold.
 - The White House, under the leadership of Jared Kushner, is meeting with senators, members, and outside groups to craft legislation making changes to the legal immigration system. This comes after the President's comments at the State of the Union address and just days ago to a group of governors that he believes legal immigration should be increased. The concept is in its early stages and it is unknown what additional provisions related to border security, “Dreamers,” TPS, etc. may be included.
 - H.J. Res. 46, which terminates the national emergency declaration President Trump issued to reallocate funding for the border wall, passed the House last week with the support of 13 Republican members. The Senate resolution is privileged and, therefore, requires consideration by the Senate. The Senate is expected to consider it by mid-March. It is anticipated to pass with the support of several Republicans, but it is unlikely that either chamber will have the votes to override a presidential veto.