

RECENT REGULATORY DEVELOPMENTS AND WHAT'S ON THE HORIZON FOR INTERNATIONAL STUDENT & SCHOLAR PROGRAMS

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SCOPE & TOPICS

Recent key developments

- Primarily changes to agency policy and adjudications related to BAHA and “public safety” EOs and memo on vetting/screening

What’s on the horizon

- Regulatory agenda
- Continuing/more difficult adjudications

What you can do

- Keeping up with developments
- Basic tips for navigating new environment
- Reporting problems and advocating

Beyond the scope of this session

- Congress, politics, elections (but we’ll suggest other sessions on these)
- Media reports about possible changes

RECENT KEY DEVELOPMENTS

Department of State

U. S. Customs & Border Protection

- “Travel ban” and litigation
- Multi-agency national vetting center announced
- Department of State:
 - Instructed consulates to focus on thorough examination of visa eligibility factors
 - Implemented form DS-5535
 - Proposed adding social media info. to DS-160
 - Expanded “30/60 day rule” to “90 day rule”
 - Added stricter residence abroad FAM language
 - EO deleted 3-week goal for visa interviews
- U. S. Customs & Border Protection
 - Expanded inspection of devices & social media
 - Enhanced security standards for flights to U.S.

RECENT KEY DEVELOPMENTS

U. S. Citizenship & Immigration Services

- Several announcements re putting U.S. workers first and combatting H-1B fraud/abuse
- USCIS:
 - Rescinded deference policy in adjudicating NIV extension petitions
 - Rescinded policy of waiving AoS interview for employment-based LPR applicants
 - Requires COS “bridge applications,” making COS impossible/impractical for most*
 - For STEM OPT, strictly limits placement at employer client-site (“3rd party site”)
 - Proposed change to counting “unlawful presence” time (toward 3- and 10-year bars on entering U.S.) for Fs/Js/Ms after status violation
 - Implementing “extreme adjudications” of OPT applications and H-1B petitions (PWDs, CPT, school attendance, etc.)

WHAT'S ON THE HORIZON: REGULATORY AGENDA

Background: The
Public Notice and
Comment Process

Administrative Procedure Act (APA)

Refer to NAFSA's "Basics of Rulemaking Under the APA" for background on the rulemaking process, where you will find, for example, an explanation of the difference between a proposed rule and a final rule

General Path

1. Conceive, plan, develop, draft, vet
2. Regulatory Agenda
3. OMB Review
4. Proposed Rule Notice and Comment
5. Analyze Comments
6. OMB Review
7. Final Rule with Effective Date
8. Congressional Review Act

REGULATORY AGENDA BASICS

What the Unified
Regulatory Agenda is and
where to find it

“Unified Agenda of Regulatory and Deregulatory Actions”

- Twice per year: Spring and Fall
- Each agency lists regulatory actions it expects to complete in next 12 months
- Target dates are for planning and public notice only
- Only title and descriptive blurb are listed
- Rules reported can be at any stage:
 - Proposed
 - Interim Final
 - Final
 - Long Term Action

To access it: NAFSA AM360 page/news feed:

www.nafsa.org/am (under “Trending Issues”)

OVERVIEW: KEY FIJIM ITEMS – SPRING 2018 REGULATORY AGENDA

Published May 9, 2018

F-I and M-I Students

- Practical Training Reform
- Adjusting the SEVIS I-901 Fee
- Strengthening Oversight of F and M Schools
- Eligibility Checks on DSOs and ROs

J Exchange Visitors

- “Final-Final” Subpart A
- DOS Presumption Against Recommending 212(e) No-Objection and Exceptional Hardship Waivers
- Summer Work Travel, Au Pair, and Camp Counselor Categories

PRACTICAL TRAINING REFORM

Proposed Rule Target
Date October 2018

- “Improve protections of U.S. workers who may be negatively impacted by employment of nonimmigrant students on F and M visas”
- “New requirements that would reduce fraud and abuse in the practical training programs”
- “Increased oversight of the schools and students participating in the program to ensure compliance with requirements of the program”
- Unclear at this time how the rule might affect 12-month OPT, 24-month STEM extensions, or both

ADJUSTING THE SEVIS I-901 FEE

Proposed Rule Target
Date September 2018

- 2017 SEVP “comprehensive fee study... determined that current fees do not recover the full costs of the services provided”
- “ICE will propose to adjust its fees for individuals and organizations to establish a more equitable distribution of costs and to establish a sustainable revenue level”
- “The SEVP fee schedule was last adjusted in a rule published on September 26, 2008”
- **Proposed rule at OMB 4/26/2018**

STRENGTHENING OVERSIGHT OF F AND M SCHOOLS

Long-Term Action

- “Improve the capability of the Student and Exchange Visitor Program (SEVP) to oversee DSOs”
- “Institute new eligibility and training requirements for DSOs”
- Would be published first as a proposed rule with request for public comment

DSO AND RO VETTING

Long-Term Action

- “Requiring DSOs and ROs to undergo an eligibility check”
- “Help DHS prevent potential criminal activities or threats to national security that may result from non-compliance by DSOs & SEVP-certified schools or ROs and Exchange Visitor Program (EVP) sponsors”
- “Necessary enforcement and accountability mechanisms built in to the SEVIS to safeguard U.S. security interests”
- Would be published first as a proposed rule with request for public comment

J-1 “FINAL FINAL” SUBPART A

Final Rule Target Date
July 2018

- “Encompass technical changes to the General Provisions and address public diplomacy and foreign policy concerns, including the Department's ability to monitor program sponsors and to ensure the safety and well-being of foreign nationals who come to the United States as program participants”
- Incorporates any changes based on public comments received on the Interim Final Subpart A rule that went into effect on January 5, 2015

DOS PRESUMPTION
AGAINST
RECOMMENDING
212(E) WAIVER

Interim Final Rule
Target Date July 2018

- Would create a presumption against DOS recommending a waiver on the basis of a no-objection letter or exceptional hardship case
- Would not eliminate waivers on those bases, but it will likely create a new or revised burden of proof (e.g., requiring a no objection letter **plus** establishing whatever other factors DOS might specify in the new regulation)
- No further details from DOS are available at this time. As an interim final rule, it would go into effect once published in the Federal Register, but might still allow public comment

OVERVIEW: KEY H, B/W, & HEALTHCARE WORKER ITEMS – SPRING 2018 REGULATORY AGENDA

Published May 9, 2018

H-1B Specialty Workers

- “Strengthening the H-1B Program”
- Registration requirement for employers filing cap-subject petitions
- Discontinuing work authorization for H-4 dependent spouses seeking LPR

Health care workers

- Updated English language proficiency requirements for certain health care workers

B-1/B-2 and WT/WB Visitors

- DHS would Clarify the criteria for admission

Revise USCIS Motion/Appeal process

- “Revises requirements and procedures for filing motions and appeals”

“STRENGTHENING THE H-1B PROGRAM”

Proposed rule target date
January 2019

- Would “revise the definition of specialty occupation to increase focus on obtaining the best and the brightest foreign nationals”
- Would “revise the definition of employment and employer-employee relationship to better protect U.S. workers and wages”
 - *Note: recent USCIS memo focused on H-1B third-party placement and employer-employee relationship*
- Would impose additional requirements to ensure employers pay appropriate wages to H-1Bs

DISCONTINUE WORK AUTHORIZATION FOR H-4S SEEKING LPR

Proposed rule target date
June 2018

- Would remove regulation allowing work authorization (EADs) for certain H-4 spouses of H-1B workers who are seeking employment-based Lawful Permanent Residence
- Pursuant to ongoing litigation, DHS has announced a new June target date

UPDATED ENGLISH REQUIREMENTS FOR HEALTH CARE WORKERS

Proposed rule target date
September 2018

- Would update the regulatory English language requirements for those in any of the seven non-physician health care professions addressed in the regulation
- Secretary of HHS in consultation with Secretary of Ed. will set new requirements, identify appropriate tests and minimum scores

**OVERVIEW: KEY VISA,
ENTRY/EXIT, & DOS
ITEMS – SPRING 2018
REGULATORY AGENDA**

Published May 9, 2018

Visas

- DOS to clarify that consular officer may request U.S. employment history from nonimmigrant visa applicant
 - Proposed rule target date: Oct. 2018

Amend consular (visa) fee schedule

- “Better align fees with costs of providing services”
 - Proposed rule target date: Dec. 2018

Collection of biometric data at entry/exit

- Expands current pilot program
 - Interim final rule target date: August 2018

Organization of Dept. of State

- Deregulatory action to decrease burden on public searching for DOS forms, addresses, and information
 - Final rule target date: July 2018

OMB REVIEW OF DHS & DOS REGULATORY AGENDA ITEMS

<http://www.reginfo.gov/public/do/eoPackageMain>



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Office of Information and Regulatory Affairs (OIRA)
Executive Order Submissions Under Review
May 22, 2018

Department of Homeland Security

AGENCY: DHS-USCIS RIN: [1615-AA22](#) Status: [Pending Review](#)
TITLE: Public Charge Grounds
STAGE: Proposed Rule ECONOMICALLY SIGNIFICANT: No
RECEIVED DATE: [03/29/2018](#) LEGAL DEADLINE: None

AGENCY: DHS-USCIS RIN: [1615-AC21](#) Status: [Pending Review](#)
TITLE: H-2B Temporary Nonagricultural Worker Program
STAGE: Final Rule ECONOMICALLY SIGNIFICANT: No
RECEIVED DATE: [05/11/2018](#) LEGAL DEADLINE: None

AGENCY: DHS-USCG RIN: [1625-AC47](#) Status: [Pending Review](#)
TITLE: TWIC Reader Requirements; Delay of Effective Date
STAGE: Proposed Rule ECONOMICALLY SIGNIFICANT: No
RECEIVED DATE: [04/18/2018](#) LEGAL DEADLINE: None

AGENCY: DHS-USICE RIN: [1663-AA74](#) Status: [Pending Review](#)
TITLE: Adjusting Program Fees for the Student and Exchange Visitor Program
STAGE: Proposed Rule ECONOMICALLY SIGNIFICANT: No
RECEIVED DATE: [04/26/2018](#) LEGAL DEADLINE: None

WHAT ELSE IS HAPPENING IN THE AGENCIES?

As mentioned previously, stricter/extreme scrutiny of all eligibility requirements – visas, applications, petitions, etc.

Extremely slow agency processing times for some processes

Phasing out Temporary Protected Status

Phasing out DACA (currently enjoined by the courts)

Increased worksite enforcement, or at least many statements that it will increase

NAVIGATING THE NEW AGENCY ENVIRONMENT

Advising and Application/Petition Processing

- Expect difficult adjudications, critical scrutiny, and don't rely on prior leniencies or common sense approaches by agencies
- Refresh your knowledge of regulations and agency guidance, form instructions, web information
- Set realistic expectations for advisees, beneficiaries, departments, administration
- Fully inform advisees of risks (e.g., *STEM OPT rule supplementary information in addition to regulations*)
- Prepare petitions/applications as if process is adversarial
 - Analyze weaknesses and potential misunderstandings
 - How could it be denied within the law/regulations?
- Pursue appeals, Congressional assistance, legal redress, and inform your advisees of these options

WHAT ELSE CAN YOU DO?

Within Your
Institution and
Beyond

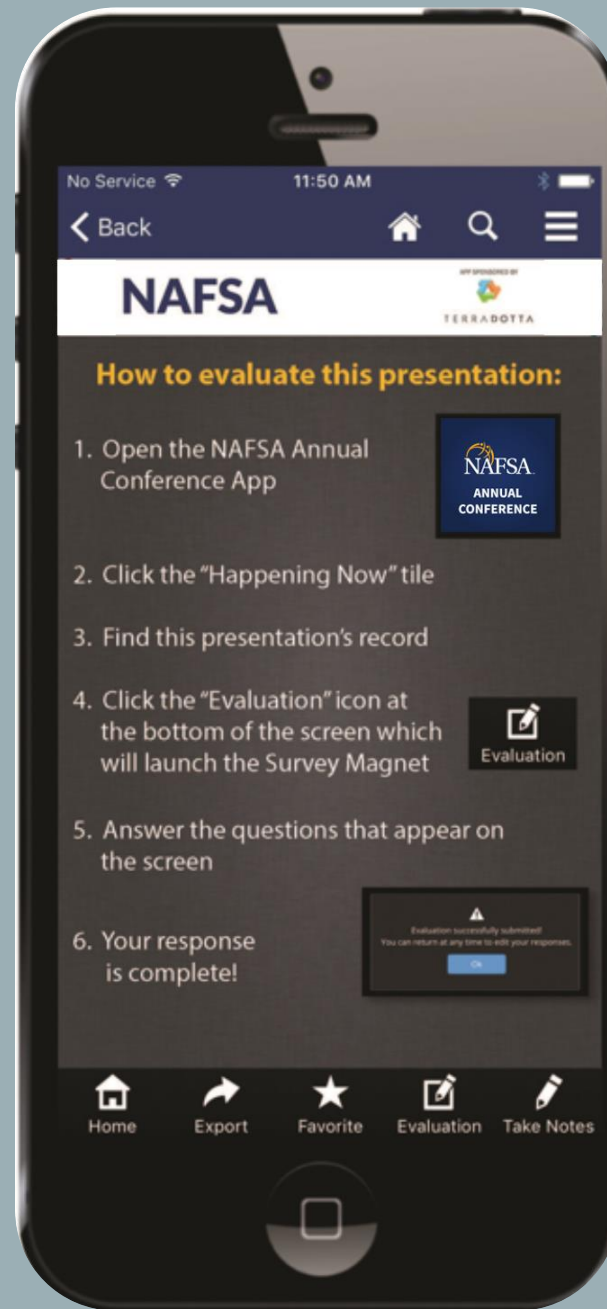
- Keep up: AM360 page/news feed www.nafsa.org/am
- Report problems to IssueNet Report an Issue: <http://issuenet.nafsa.org/>
- Inform campus leadership about how these developments may impact your campus
- Express concerns to your Congressional leaders
- Submit comments when there's an opportunity
 - Simple (but thoughtful/careful) is good
 - Also give NAFSA your comment ideas via IssueNet
- Participate in NAFSA Advocacy Day <http://www.nafsa.org/AdvocacyDay>
- Participate in grass roots advocacy and get advocacy tips by signing up for Connecting Our World <https://www.connectingourworld.org/>

WHAT CAN YOU DO AT THIS CONFERENCE?

Other Sessions and Meetings

- Attend the many agency-focused “Current Issues” sessions proposed and led by ISS-RP members
- Other sessions/mtgs. that may be of interest:
 - NAFSA Pavilion: **Sharing the Value of International Students and Scholars to the World: A NAFSA Public Policy Engagement Opportunity**, Wednesday, 3:00-3:30, Hall E
 - Guest Speaker: **Immigration Policy in 2018 and Into the Future**, Thursday, 1:00- 2:00, Room 114
 - **Policymaking in International Education: The View from Washington**, Thursday, 9:00-10:15, Room 114
- Visit USCIS booth in the exhibit hall
- Speak with the agency officials here at the conference when you see them

Please
complete
this session
evaluation
NOW!



Or **FAVORITE** now
and **EVALUATE**
later!

THANKS!

For a copy of the slides, go to the
NAFSA AM360 page:

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