While Congress has not yet enacted legislation that would reform the H-1B program, including proposals to impede or bar our industry from accessing H-1B visas, the Administration has moved full-speed ahead to implement the Buy American/Hire American (BAHA) Executive Order (EO).

BAHA directs the Secretaries of Homeland Security, State, and Labor, and the Attorney General to review regulations that allow H-1B beneficiaries to work in the United States. Over the past few months, each department has acted to carry out BAHA and other executive orders intended to limit immigration and restrict access to H-1Bs as detailed in this Timeline.

January 15, 2017

S. 180/H.R. 1303 “H-1B and L-1 Visa Reform Act of 2017” introduced by Senators Grassley (R-IA) and Durbin (D-IL). This legislation specifically restricts “labor for hire” placements.

January 25, 2017

President issues Executive Order (EO) # 13768 “Enhancing Public Safety in the Interior of the United States.”

January 27, 2017

President issues EO # 13780 “Protecting the Nation from Foreign Terrorist Entry into the United States.”

March 16, 2017

H.R. 1303 “H-1B and L-1 Visa Reform Act of 2017” introduced by Bill Pascrell (D-NJ). This legislation specifically restricts “labor for hire” placements.

March 31, 2017

USCIS issues a new Policy Memorandum which rescinded and superseded the December 22, 2000 “Guidance Memo on H-1B Computer-Related Positions” which may no longer be eligible for H-1Bs.

April 3, 2017

USCIS temporarily suspends premium processing for all H-1B visa petitions for up to six months, throwing business and worker plans into disarray.

April 3, 2017

USCIS announces further measures to detect fraud and abuse in the H-1B program; will target for site visits H-1B dependent employers and employers petitioning for H-1B workers who work offsite at another company/organization.

April 3, 2017

Department of Justice cautions employers petitioning for H-1B visas not to discriminate against U.S. workers.

April 4, 2017

Department of Labor announces the agency would (1) initiate investigations of H-1B program violators; (2) consider updates to the Labor Condition Application; (3) engage stakeholders to make regulatory and legislative improvements; and (4) establish an email address for whistleblowers to report violations.
April 18, 2017  President signs **EO #13788, Buy American/Hire American**, which directs the Secretaries of Homeland Security, State, and Labor, and the Attorney General to review regulations that allow H-1B visa beneficiaries to work in the United States.

April 25, 2017  President nominates Lee Francis Cissna to serve as Director, USCIS (DHS). Cisnas, a former Grassley staffer, helped draft “H-1B and L-1 Visa Reform Act.”

May 4, 2017  Department of State requests Office of Management & Budget approval of *Supplemental Questions for Visa Applicants*, Form DS-5535* asking for extensive additional information for immigrant and nonimmigrant applicants.

May 23, 2017  OMB approves State Department Form DS-5535.

July 26, 2017  USCIS holds Listening Session for the public to express their concerns about the various immigration programs. USCIS releases first round of H-1B data.

August 1, 2017  Sponsors of S.180/H.R. 1303 send bipartisan letter to President endorsing regulatory crack-down on H-1Bs and reforms contained in bill.


August 3, 2017  Department of State requests OMB to extend use of Form DS-5535 which expires November 30. Comments due October 2, 2017. The new “emergency” Supplemental Questions for Visa Applicants Form DS-5535, approved by the Office of Management and Budget (OMB) in June, allows “consular officials to request all prior passport numbers, five years’ worth of social media handles, email addresses, and phone numbers and 15 years of biographical information including addresses, employment, and travel history.” As pointed out in comments filed by the university and scientific communities, the notice did not specify which categories of visa applicants would be subject to the new requirement for increased information collection. Instead, immigrant and nonimmigrant applicants (including H-1B beneficiaries applying from overseas) “who have been determined to warrant additional scrutiny in connection with terrorism or other national security visa ineligibilities” will be asked to complete the form. Similar to the circumstances with the LCA form, the U.S. Chamber of Commerce filed comments objecting to significant changes in policy without following Administrative Procedures Act requirements.

August 9, 2017  USCIS issues policy memo defining “affiliate” and “subsidiary” for purposes of establishing fee when filing an H-1B petition.

August 28, 2017  USCIS announces that in-person interviews will now be required for persons lawfully in the U.S. seeking permanent residence status.

September 5, 2017  President announces termination of DACA program in six months, unless Congress acts. (H-1B “reform” could be included in DACA legislation.)

September 13, 2017  Senate Judiciary Committee postpones hearing on Immigration/Reforms to Nation’s Guestworker Programs following DACA termination announcement.
September 20, 2017 Reuters analysis of USCIS data shows 45 percent increase in Requests for Evidence (RFE) over same time last year.

October 2, 2017 Responses due to DOL proposed revisions to the Labor Condition Application (LCA) filed by all H-1B employers. Form changes, which were significant and substantive, target the staffing industry with questions regarding secondary employers and third-party placements. TechServe Alliance and the U.S. Chamber of Commerce believe that the proposed additions to the form overstep DOL’s regulatory authority. The Chamber filed a detailed response/opposition to the proposed form incorporating these shared concerns.

October 2, 2017 Comments due to Department of State request to extend use of Form DS-5535, which expires November 30. Human Rights Watch was among the groups leading opposition.

October 3, 2017 USCIS resumes premium processing for H-1B visa extensions and for all types of H-1B petitions.

October 3, 2017 USCIS and Department of State reportedly crack down on individuals with alcohol-related charges or offenses; make ineligible for status extension.

October 5, 2017 Senate confirms Cissna as USCIS Director, 54-43.

October 20, 2017 DHS transmits audit of USCIS site visits titled “USCIS Needs a Better Approach to Verify H-1B Visa Participants.” USCIS will implement four recommendations after which “violators can expect to have petitions (more quickly) revoked.”

October 23, 2017 USCIS Director Cissna rescinds the guidance memo directing immigration officials to give deference to previous decisions when processing visa extensions. The updated guidance instructs officers to apply the same level of scrutiny when reviewing nonimmigrant visa extension requests even where the petitioner, beneficiary, and underlying facts are unchanged from a previously approved petition.

November 30, 2017 State Department will continue “extreme vetting” of certain visa applicants using Form DS-5535 beyond the initial six-month emergency period. (See August 3 and October 2 entries.) OMB considered almost 800 comments, mostly opposed, in making this decision.


December 14, 2017 USCIS announces intentions to propose rules that may restrict or bar staffing firm access to H-1Bs. One of the proposed rules “Strengthening the H-1B Nonimmigrant Visa Classification Program” would revise the definitions of “specialty occupation,” “employment,” and “employer-employee relationship” in the H-1B context. The rule may also contain provisions regarding the payment of appropriate wages to H-1B visa holders to “increase focus on truly obtaining the best and brightest foreign nationals via the H-1B program.” (Fall 2017 Agency Statements and Regulatory Priorities, Office of Information & Regulatory Affairs, OMB.)
December 14, 2017  USCIS announces intention to rescind February 25, 2017 final rule that extended employment authorization to certain H-4 dependent spouses of H-1B beneficiaries. (Fall 2017 Agency Statements and Regulatory Priorities, Office of Information & Regulatory Affairs, OMB.) Tech industry representatives wrote USCIS strongly opposing termination of the program.

December 30, 2017  McClatchy reports DHS is considering new regulations that would end extensions for H-1B visa holders awaiting green card approval. The proposed regulations would reinterpret language in the “American Competitiveness in the 21st Century Act” to stop extensions and result in “self-deportation.”

January 8, 2018  Following a strong backlash from the business community and litigation threats, McClatchy reports that the Administration refuted they were ever considering any changes to H-1B visa extension policy.

January 2018  USCIS updates its website with new restrictive changes to the STEM OPT program. The change was posted to the USCIS website in January 2018 but went unnoticed until April. The USCIS website announcement effectively blocks staffing firms from using the STEM OPT program; participants must now work at and receive training at their employer’s headquarters, and not at third-party client sites. Under the new directive, STEM OPT participants currently placed at third-party sites may find their petitions for H-1B status denied, further decreasing the supply of workers needed to fill IT and engineering positions. (USCIS reversed this policy on August 17, 2018.)

February 22, 2018  USCIS issues the “Third Party Worksite Policy Memorandum,” including requirements for direct placements and multi-layered placements and revisions to the definition of employer-employee. The memo, referred to by Director Cissna as the “contracts and itineraries” memo was effective immediately.

March 20, 2018  USCIS announces that effective April 2, 2018 premium processing for H-1B cap-subject petitions, including petitions seeking an exemption for individuals with a U.S. master’s degree or higher, will be temporarily suspended until September 10, 2018.

April 4, 2018  USCIS Director Cissna writes Senate Judiciary Committee Chairman Charles Grassley (R-IA) with assurances that more restrictive proposals are coming, including removing H-4 dependent spouses from the class of aliens eligible for employment authorization, requiring an electronic registration system for petitions subject to numerical limitations on H-1B visa applications, and revising the definition of specialty occupation.

May 10, 2018  Office of Information and Regulatory Affairs releases Spring 2018 Regulatory Agenda including revising the definitions of “specialty occupation, employment, and employer-employee relationship” (See December 2017 entry above.) (Notice of Proposed Rulemaking (NPRM) projected to be published in January 2019); removing H-4 dependent spouses from group of aliens eligible for employment authorization (NPRM projected June 2018); establishing an electronic registration program for H-1B visa petitions subject to numerical caps (NPRM projected July 2018); reforming the practical training programs (NPRM projected October 2018); (new item) instituting electronic filings for immigration benefits, eliminating paper-
based process (NPRM projected April 2019); revising USCIS fee schedule (NPRM projected October 2018).

May 11, 2018

USCIS and the Department of Justice announce a Memorandum of Understanding (MOU) to “increase the ability of the agencies to share information and help identify, investigate, and prosecute employers who may be discriminating against U.S. workers and/or violating immigration laws.”

May 11, 2018

USCIS announces it is Changing Policy on Accrued Unlawful Presence by Nonimmigrant Students and Exchange Visitors. Individuals (and dependents) in F, J, or M status who fail to maintain their status on or after August 9, 2018, will start accruing unlawful presence as specified in the policy memorandum. USCIS cites the President’s Executive Order: Enhancing Public Safety in the Interior of the United States as the basis for the change. The university and high-tech communities submitted comments opposing the policy change.

May 16, 2018

Representatives Pramila Jayapal (D-WA) and Mia Love (R-UT) lead 130 bipartisan Members of Congress in writing DHS to support Work Authorization of H-4 Dependent Spouses. (As of August 31, 2018, the Administration has not yet acted to rescind the existing rule.)

July 5, 2018

USCIS releases a June 28, 2018 Policy Memorandum updating “Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens.” The memo grants USCIS new, broad authority to issue NTAs. (See July 30, 2018, implementation postponed pending issuance of operational guidance.)

July 13, 2018

USCIS rescinds June 3, 2013 Policy Memorandum “Requests for Evidence and Notices of Intent to Deny” and provides guidance to allow adjudicators to deny H-1B visa petitions without first issuing Requests for Evidence (RFEs) or a Notice of Intent to Deny (NOID). The new guidance will be effective September 11, 2018. The impact of this policy rescission combined with the June 28, 2018 Policy Memorandum re NTAs would be significant and highly detrimental to employment-based immigration.

July 30, 2018

Following strong public opposition, USCIS postpones until further notice implementation of the June 28, 2018 Policy Memorandum updating “Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens.”

August 9, 2018

USCIS revises May 11, 2018 guidance on unlawful presence by non-immigrant students and exchange visitors following public comment. “Under the revised final policy memorandum, effective August 9, 2018, F and M nonimmigrants who fall out of status and timely file for reinstatement of that status will have their accrual of unlawful presence suspended while their application is pending.”

August 17, 2018

USCIS reverses “website policy” posted in January 2018 that effectively blocked staffing firms from using the STEM OPT program. In a major victory for the staffing industry, USCIS clarified that STEM OPT participants may engage in a training experience that takes place at a site other than the employer’s principal place of business as long as all of the training
obligations are met, including that the employer has and maintains a *bona fide* employer-employee relationship with the student.

**August 23, 2018**  
USCIS held a [stakeholder teleconference](https://www.uscis.gov/stakeholder-teleconference) to discuss the revised “Accrual of Unlawful Presence and F, J, and M Nonimmigrants Policy Memorandum” issued by USCIS on Aug. 9, 2018.

**August 28, 2018**  
USCIS extends and expands the temporary suspension of premium processing for cap-subject H-1B petitions through February 19, 2019. The temporary suspension was scheduled to expire on September 10, 2018. In addition, commencing September 11, 2018, the suspension will apply to certain additional H-1B petitions.

**August 31, 2018**  
USCIS announces a 14.92 percent increase in the premium processing fees for [Form I-129, Petition for a Nonimmigrant Worker](https://www.uscis.gov/.SingleOrDefault) and [Form I-140, Immigrant Petition for Alien Workers](https://www.uscis.gov/SingleOrDefault). Effective October 31, 2018, the premium processing fee will increase to $1,410 from the current fee of $1,225. The increase reflects inflation since the last adjustment in 2010.

**September 6, 2018**  

**September 11, 2018**  
USCIS posts optional “checklists” for submitting initial required evidence for Form I-129 to assist petitioners, applicants, or requestors to comply with the [July 13 Policy Memorandum](https://www.uscis.gov/Policy-Memorandum-entitled-updated-guidance-for-the-referral-of-cases-and-issuance-of-notices-to-appear-ntas-in-cases-involving-inadmissible-and-deportable-aliens-policy-memorandum), Issuance of Certain RFEs and NOIDs; Revisions to Adjudicator’s Field Manual (AFM) Chapter 10.5(a), Chapter 10.5(b). However, there are no examples of what might constitute sufficient evidence.

**September 26, 2018**  
Senators Kamilla Harris and Kristin Gillibrand write [DHS and USCIS](https://www.uscis.gov/write-dhs-and-uscis) to support Work Authorization of H-4 Dependent Spouses and urge the government to reconsider plans to end the program. DHS in an August 20, 2018 court filing in [Save Jobs USA v. DHS](https://www.uscis.gov/save-jobs-usa-v-dhs) confirmed that proposed changes continue to be under consideration; any changes must go through the formal rulemaking process. DHS is required to update the court every 90 days.

**September 26, 2018**  

**September 27, 2018**  
USCIS hosts a stakeholder teleconference to discuss the Policy Memorandum entitled “[Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens](https://www.uscis.gov/Updated-Guidance-for-the-Referral-of-Cases-and-Issuance-of-Notices-to-Appear-NTAs-in-Cases-Involving-Inadmissible-and-Deportable-Aliens)” issued by USCIS on June 28, 2018. Under the new guidance, USCIS officers will now issue NTAs for a wider range of cases where the individual is removable and there is evidence of fraud, criminal activity, or where an applicant is denied an immigration benefit and is unlawfully present in the
United States. Employment-based petitions are not implicated at this time.

October 17, 2018  Office of Information and Regulatory Affairs releases Fall 2018 Regulatory Agenda including revising the definitions of "specialty occupation, employment, and employer-employee relationship" (See December 2017 entry above.) (Notice of Proposed Rulemaking (NPRM) delayed to August 2019); removing H-4 dependent spouses from group of aliens eligible for employment authorization (NPRM delayed to November 2018); establishing an electronic registration program for H-1B visa petitions subject to numerical caps (NPRM projected October 2018); reforming the practical training programs (NPRM delayed to September 2019); instituting electronic filings for immigration benefits, eliminating paper-based process (NPRM projected April 2019); revising USCIS fee schedule (NRPM delayed to February 2019).

November 1, 2018  USCIS will hold a stakeholder teleconference to discuss the Premium Processing Suspension.

November 16, 2018  Save-the-Date: USCIS Annual Stakeholder Conference, National Archives.