



This update covers several legislative and regulatory developments, including today's breaking news regarding the expiration of a Presidential Proclamation that restricted issuance of new nonimmigrant visas. The TechServe Alliance Government Affairs Team also asks for your input on independent contractor use and pending/proposed regulations. For more detailed information, questions, or to share your stories, please contact Julie Strandlie at [strandlie@techservealliance.org](mailto:strandlie@techservealliance.org).

### **Trump Administration Proclamation Restricting Nonimmigrant Visas Expires Today**

The Biden Administration on March 30, 2021 [announced](#) that Presidential Proclamation 10052, which restricted nonimmigrant visas from June 2020 to March 31, 2021, would expire today.

At the early stages of the pandemic, the Trump Administration issued the "[Proclamation on Suspension of Entry of Immigrants and Nonimmigrants Who Continue to Present a Risk to the United States Labor Market](#)." Proclamation 10052 suspended new H-1B, H-4, H-2B, L, and J visas until December 31, 2020. On December 31, 2020 Trump Administration extended the Proclamation through March 31, 2021.

The Trump Administration claimed that visas had to be withheld to protect U.S. jobs when hundreds of thousands were out of work due to COVID-19, projecting that 525,000 American jobs would be available to U.S. workers as a result of the order. The U.S. Chamber of Commerce and the National Association of Manufacturers successfully filed suit and their members were exempted.

While the Biden Administration immediately revoked the "Buy American, Hire American" Executive Order, [stakeholders](#) were concerned when the new Administration did not immediately repeal Proclamation 10052. On March 16, 2021, a bipartisan group of Senators (Menendez (D-NJ), Bennet (D-CO), Sheehen (D-NH), King (I-ME), Booker (D-NJ)) [wrote](#) President Biden asking for immediate action noting the urgent need for temporary employees for summer positions.

The Senators were also concerned that "[l]ooking ahead to long-term economic recovery, the deficit of foreign workers to fill available American tech jobs will worsen through any further lack of access to foreign talent. Reports also suggest that many jobs in fields such as information technology that would have been filled by H-1B nonimmigrants have remained open or were moved permanently overseas."

### **DOL to Withdraw Independent Contractor Regulations; TechServe Seeks Member Input**

The Department of Labor on [March 11, 2021 announced through a new notice of proposed rulemaking](#) (NPRM) its intention to withdraw the Trump Administration's Independent Contractor Final Rule. [Comments on the withdrawal are due by April 12](#). The TechServe Government Affairs Team seeks input from members who rely on independent contractors. While this NPRM focuses on the withdrawal of the current rule, we anticipate a new round of rulemaking in the near future.

In response to the Trump Administration NPRM, TechServe [submitted comments in October 2020](#) in support of the Department of Labor's proposed independent contractor rule (under the Fair Labor Standards Act) based on an economic reality test. The proposed rule supported by TechServe was finalized and [published in the Federal Register](#) on January 7, 2021. The rule was scheduled to go into effect on March 8, 2021. On January 20, 2021, the [Biden Administration announced a freeze](#) on several

rules, including the IC rule, that were finalized in the last days of the previous administration. See ["White House "Regulatory Freeze" Memo Dooms DOL Independent Contractor Rule."](#)

Following [notice and comment](#) that closed February 24, 2021, DOL announced on March 4 that the effective date for the IC rule was delayed to May 7, 2021. Subsequently, on [March 11, DOL announced its intention to withdraw the rule](#). On March 26, 2021, a [coalition filed a lawsuit](#) against the Administration for delay and the proposed withdrawal of the IC Rule.

At this time, the Biden Administration has not proposed a new substantive rule FLSA IC rule. Last week, the [Senate confirmed Boston Mayor Marty Walsh \(68-29\)](#) to serve as Secretary of Labor; his confirmation is likely to spur action on several issues we are following. The U.S. Chamber of Commerce supported Walsh's nomination [stating in a letter](#) to the Senate that "Mayor Walsh has a reputation as a consensus builder and has displayed a willingness to work with a wide array of constituencies." In the letter, new Chamber President Suzanne Clark lists maintaining the flexibility to work as an independent contractor as a Chamber priority.

The ability for high-tech entrepreneurs to continue to self-select independent contractor status is a TechServe Alliance Legislative and Regulatory priority. We will continue to follow regulatory and litigation developments and submit comments as appropriate.

### **Paycheck Protection Program Extended to May 31, 2021**

On March 30, 2021, President Biden [signed into law overwhelmingly bipartisan legislation](#) to extend the Paycheck Protection Program application period until May 31, 2021. Both new and second draw borrowers can apply. The legislation also extends until June 30, 2021 the time the Small Business Administration (SBA) has to approve the loan. The American Rescue Plan Act of 2021 (P.L. 117-2) provided an additional \$7.5 billion in funding for this very popular program; more information is provided by the [Senate Small Business Committee](#). Yesterday, some major banks began emailing business clients invitations to apply for loans and procedures for seeking forgiveness of previously issued loans.

### **SBA Administrator Confirmed with Bipartisan Support**

On March 18, 2021, the Senate overwhelmingly confirmed President Biden's nominee to head the SBA. New Administrator [Isabella Castillas Guzman](#) is an experienced small business owner and previously served as SBA senior advisor and deputy chief of staff. Most recently, Administrator Guzman was the Director of California's Office of the Small Business Advocate.

TechServe Alliance works closely with the SBA Office of Advocacy and has contributed background information and comments to several SBA submissions on pending regulations. Most recently, in November 2020, SBA consulted TechServe and our members on the pending [DOL H-1B Prevailing Wage regulation](#). DOL recently announced the [rule would be delayed](#) through 2022.

The next Legislative/Regulatory Update will discuss the Prevailing Wage rule and related H-1B visa developments in more detail. In the meantime, please contact us with any questions.