

August 21, 2020

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## IMMIGRATION AND COMPLIANCE BRIEFING:

### DEPARTMENT OF HOMELAND SECURITY AGENCY UPDATES FOR AUGUST

#### USCIS TO FURLOUGH OVER 13,000 U.S. EMPLOYEES

Given stalled stimulus negotiations in Congress, the U.S. Citizenship and Immigration Services ("USCIS") notified 13,400 of its 20,000 U.S. employees that they will be furloughed at the end of this month. The furloughs, expected to impact every USCIS office, may remain in effect through the end of the fiscal year.

This will have short- and long-term impacts on all types of immigration processes, from work authorization renewals and temporary visa applications, to green card and U.S. citizenship applications. Specifically, with nearly 70% of the USCIS workforce furloughed, processing times that already can take over a year are expected to become even more delayed.

USCIS initially announced a \$1.2 billion budget deficit in May and notified employees that furloughs would begin as early as August 3. ***See our client alert [here](#).***

The agency then revised its budget based on receiving a higher number of case submissions and related filing fees than expected, and postponed plans to furlough employees. Despite current projections showing a small profit for Fiscal Year 2020, USCIS nonetheless maintains that it cannot avoid furloughs without additional funding.

#### USCIS "PUBLIC CHARGE RULE" RE-INSTATED, EXCEPT IN NY, CT, AND VT

On August 12, 2020, a Second Circuit judge ruled that USCIS may continue to implement the "Public Charge Rule" to process immigrant and nonimmigrant applications for individuals within the U.S. who are outside of New York, Connecticut, and Vermont. This ruling narrows a July 29th nationwide injunction that prohibited USCIS from implementing the rule anywhere in the U.S. during the COVID-19 pandemic. A separate injunction, also granted on July 29, 2020, remains in place to prevent the Department of State (DOS) from implementing the Public Charge rule for individuals outside of the U.S.

The Public Charge Rule has been the subject of ongoing litigation since it was announced in 2019. It was implemented by the Department of Homeland Security (DHS) on February 24, 2020 and mandates that certain individuals applying for U.S. immigration status are generally inadmissible into the U.S. if they are found **likely** to become a public charge **at any time**. ***For information about the Public Charge Rule, please refer to our client alert [here](#).***

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**IMMIGRATION AND COMPLIANCE BRIEFING:**DEPARTMENT OF HOMELAND SECURITY  
AGENCY UPDATES FOR AUGUST**USCIS REMINDS F-1 OPT STUDENTS  
AND DSOS TO UPDATE SEVIS  
RECORDS**

International students participating in Optional Practical Training (OPT) pursuant to F-1 visa status are reminded to inform their Designated School Official (DSO) within ten (10) days of any changes to their employment or personal information. DSOs must then update student information in the Student and Exchange Visitor Information System (SEVIS) within twenty-one (21) days. F-1 students may also update employment information through the Student and Exchange Visitor Program (SEVP) Portal. It is important to ensure that student records are current and accurate.

F-1 visa holders are also reminded that accrual of more than 90 days of unemployment during the OPT period may result in a loss of status. Updating employment information in a timely manner is critical for ensuring accurate reporting and maintenance of F-1 status.

**U.S. LAND BORDER RESTRICTIONS  
CONTINUE**

■ The suspension of non-essential travel between land ports-of-entry across the northern and southern U.S. borders implemented on March 21, 2020 continue after being extended for a fourth time on July 16, 2020. The suspension remains in place through August 20, 2020 and may be extended again.

■ Recreational travel, such as for tourism or visiting relatives, remains prohibited. Land border closures do not prohibit travel for essential workers, military personnel, or medical personnel engaged in activities

combating the effects of COVID-19, and the transportation of goods is also exempted.

All COVID-19 related policies, requirements, and timeframes may change, additional modifications are anticipated. Please refer to <https://www.ice.gov/coronavirus> for updates.

**SECOND H-1B REGISTRATION  
LOTTERY**

USCIS has conducted a second H-1B lottery for Fiscal Year 2021 H-1B petitions subject to the annual quota. Following the initial lottery in March, those employers who were selected were to submit H-1B petitions on behalf of employee beneficiaries by the end of June. The number of submitted petitions did not fill the quota allotment, possibly due to COVID-19 impact on employers.

By way of background, USCIS implemented a new electronic registration system, among other changes, to the H-1B lottery system this year. Rather than submit complete H-1B petitions within a five-day window in April, as per the prior system, employers now register for the H-1B lottery between March 1 and March 20. USCIS then uses the electronic registrations to conduct a two-part, first round lottery: a general lottery for all registrants in which 65,000 are chosen, followed by a lottery for registrants with advanced degrees who were not chosen in the first lottery, in which 20,000 are chosen. Only the lottery winners are eligible to submit complete H-1B petitions for USCIS processing.

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*This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.*

**IMMIGRATION AND COMPLIANCE BRIEFING:**

DEPARTMENT OF HOMELAND SECURITY  
AGENCY UPDATES FOR JUNE

Registrations not selected in the first round are kept on file through the end of the fiscal year, enabling USCIS to conduct multiple lotteries if the H-1B visa quota is not met after the submission deadline for petitions.

**Please also refer to the following online resources:**

■ **Student and Exchange Visitor Information System**

Associate **Ashley Moore** contributed to this briefing.

Wiggin and Dana's Immigration and Nationality Law and Compliance Practice Group will continue to provide COVID-19 related briefings as more information becomes available. Please contact the practice group Co-Chair, **Najia Khalid**, at 203.498.4314 or **nkhalid@wiggin.com** if you have any questions.

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Visit Wiggin and Dana's COVID-19 Resource Center **here** for additional publications and helpful links on multi-disciplinary topics that are relevant during the current COVID-19 global pandemic.