CYRUS D. MEHTA & PARTNERS PLLC
US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - NOVEMBER 23, 2026

Posted on November 23, 2026 by Cyrus Mehta

Headlines:

DOL Proposes Major Changes to Labor Certification Process – The Department of Labor's proposed rule would affect when employers can file, how they recruit, and how much compliance risk each case carries. Among other things, the rule would eliminate Schedule A, which exempts certain occupations, including nurses and physical therapists, from the PERM labor market test.

U.S. District Court Vacates Duration-of-Status Rule for F, J, I Visas – In a final judgment, a federal court vacated the Department of Homeland Security's duration-of-status rule. The rule would have replaced "duration of status" admission with fixed admission periods for F, J, and I nonimmigrants.

DHS Expands 9-11 Biometric Entry-Exit Fee for Certain H-1B and L-1 Visas – The rule, issued by the Department of Homeland Security, requires that covered employers submit the fee for all extension-of-status petitions regardless of whether the related fraud prevention and detection fee applies, which includes extension petitions that do not involve a change of employer. The fee continues to apply unchanged to petitions seeking an initial grant of status.

Firm in the News

Details:

DOL Proposes Major Changes to Labor Certification Process

On November 17, 2026, the Department of Labor (DOL) published a proposed rule that would overhaul the labor certification process employers use to sponsor most foreign national workers for permanent residence. If finalized,

the proposed rule would affect when employers can file, how they recruit, and how much compliance risk each case carries. Employers with recent or planned workforce reductions would be most directly affected, and sponsored employees could face longer green card timelines.

The proposed rule would:

- Eliminate Schedule A, which currently exempts certain occupations, including nurses and physical therapists, from the PERM labor market test.
- Replace mandatory print newspaper advertising with electronic recruitment methods, such as employer websites, commercial job boards, social media, and job fairs.
- Prohibit PERM filings for two years after qualifying layoffs by the employer. A qualifying layoff is one that occurs in the same geographic area and in the same or a similar occupation that is the subject of a PERM application.
- Expand employer obligations to notify and consider laid-off U.S. workers both before and after filing the PERM application, continuing through Form I-140 processing.
- Add disclosure requirements for remote, telework, hybrid, and roving work arrangements.
- Expand employer attestations, DOL audit authority, revocation procedures, and debarment provisions.
- Move PERM and prevailing wage applications fully to electronic filing and electronic communications.

The Alliance of Business Immigration Lawyers recommends that employers should plan now. The final rule proposes to use the date on which an employer submits a PERM application to determine which set of rules will govern. It will not be sufficient for the employer to have filed a prevailing wage request; the final PERM application must have been submitted before the cutoff. Cases filed before the final rule takes effect will be processed under the current PERM regulations. DOL proposes a 90-day transition period, with the final rule taking effect 60 days from the date of publication and providing employers an additional 30 days to acclimate.

Employers should consider taking the following steps now:

- Inventory the PERM pipeline. Identify cases in prevailing wage, recruitment, or pre-filing stages, and prioritize those that could be affected if the rule is finalized.
- Review recent and planned layoffs. Coordinate with human resources and legal teams so that workforce decisions take PERM timing into account.
- Evaluate Schedule A cases. Healthcare and other Schedule A employers should discuss with counsel whether to file eligible cases under current rules.
- Assess remote and hybrid roles. Confirm how worksite locations are documented for sponsored positions.
- Strengthen recordkeeping. Expanded attestations and audit authority increase the importance of complete, well-organized recruitment files.

Comments are due by January 19, 2027. Employers can tell DOL how the proposal would affect their operations.

Back to Top

U.S. District Court Vacates Duration-of-Status Rule for F, J, I Visas

On November 16, 2026, in a final judgment in *Presidents' Alliance on Higher Education and Immigration v. Department of Homeland Security*, a federal court vacated the Department of Homeland Security's (DHS) duration-of-status rule. The rule would have replaced "duration of status" (D/S) admission with fixed admission periods for F, J, and I nonimmigrants.

Reaction from members of the coalition challenging the rule was swift:

- Miriam Feldblum, President and CEO of the Presidents' Alliance on Higher Education and Immigration, said, "Today's ruling is a clear and important victory for international students and scholars and the colleges and universities that welcome them. … The harmful consequences of the current administration's policy actions and efforts are already evident in the significant declines in international student enrollment and interest we are witnessing. If implemented, this rule would have further weakened our ability to attract international talent, disrupted educational plans, and burdened campuses."
- Randi Weingarten, President of the American Federation of Teachers, said, "Today's final order will have resounding impacts for generations of scientists and scholars from every corner of the globe that make America

> the worldwide leader in cutting-edge research. … We stand united with our 420,000 higher education members, international and American alike, so they can continue to pursue difficult questions, challenge conventional wisdom, publish findings without political interference and make U.S. colleges and universities the envy of the world."

An appeal is likely. In the meantime, the D/S framework that has been in place for decades continues to apply. The Alliance of Business Immigration Lawyers recommends that:

- International offices, designated school officials, and exchange visitor program officers should continue operating under current D/S rules. Institutions can postpone rule-specific preparations and set aside procedures and advising materials built around the four-year limit but keep them on file pending the outcome of any appeal.
- Institutions should update student and scholar communications to explain that the D/S rule has been vacated and D/S remains in place.
- F and J individuals remain admitted for D/S and there is no fixed four-year limit. However, prior requirements remain regarding F-1 employment authorization, including required timelines to apply for post-completion Optional Practical Training (OPT) or STEM OPT extensions. F and J individuals must still maintain status and, if working, valid work authorization.
- F, J, and I visa holders currently admitted for D/S remain in D/S and should continue to be admitted to the United States in D/S following international travel.

Back to Top

DHS Expands 9-11 Biometric Entry-Exit Fee for Certain H-1B and L-1 Visas

The Department of Homeland Security (DHS) issued a final rule expanding the "9-11 Response and Biometric Entry-Exit Fee" for certain H-1B and L-1 visas. The rule, effective September 9, 2026, requires covered employers to submit the fee for all extension-of-status petitions regardless of whether the related fraud prevention and detection fee applies. This includes extension petitions that do not involve a change of employer. The fee continues to apply unchanged to petitions seeking an initial grant of status.

The fee is $4,000 for H-1B extension petitions and $4,500 for L-1 extension petitions. DHS said that "all petitioners who employ 50 or more employees in the United States, if more than 50 percent of the petitioner's employees in the aggregate are in H-1B, L-1A, or L-1B nonimmigrant status, will be considered as covered employers" for purposes of the fee.

Back to Top

Firm in the News

Cyrus Mehta was quoted by *Forbes* in Immigration Rule Aims to Block Many High-Skilled Green Card Applicants. He said, "One of the troubling aspects of the proposed PERM rule is its invocation of § 204(b) as authority for requiring employers to notify USCIS of layoffs while an I-140 petition remains pending. That could invite to reach beyond its traditional role of adjudicating the immigrant petition and inject itself into the labor certification process administered by . Once notified of a layoff, USCIS could potentially question whether the permanent job remained available, whether it should have been offered to a laid-off U.S. worker, and even engage with labor-certification concepts such as whether the laid-off worker met the minimum qualifications and the area of intended employment." Mr. Mehta also said, "Although the proposal would eliminate the Schedule A designation, DOL will still be bound by INA § 212(a)(5)(A)(ii), which creates the more favorable 'equally qualified' standard for individuals of exceptional ability in the sciences or arts. Thus, even though they would now undergo recruitment, the employer would not have to reject the foreign worker merely because a minimally qualified U.S. worker applies. Schedule A Group II thus lives on in a new incarnation."

Back to Top