Anticipated Rulemaking Process for the OPT Visa Program

The federal rulemaking process is proscribed by the Administrative Procedures Act, but it can play out in many different ways depending upon the agencies involved and the specific circumstances surrounding any given rule. Although there is no predictable timeline, the graphic below outlines the steps that must be followed.

PRECIPITATING EVENT

On 8/12/2014, a federal court vacated parts of the OPT rule on procedural grounds and gave the administration time to reissue the regulations following proper public notice and comment.

DHS DRAFTS PROPOSED RULE

The administration has been considering revised OPT rules for some time already, as demonstrated by the November 2014 High-Skilled Businesses <u>Memo</u> and the July 2015 Visa Modernization and Streamlining <u>Report</u> issued by the White House. Once the rule is drafted, it will be subject to internal review by OMB.

NOTICE OF PROPOSED RULEMAKING

The notice must be published in the Federal Register. *NOTE: In some cases, agencies opt to issue an Interim Final Rule. This type of rule becomes effective immediately, and the agency stipulates that it will alter the interim rule if warranted by public comments.*

PUBLIC COMMENT PERIOD

Typically lasts 30-60 days with comments posted electronically and open to public review.

DHS DRAFTS FINAL RULE

The agency is not permitted to base its final rule on the number of comments in support or opposition; it is required to weigh the comments along with scientific data, expert opinions, and facts accumulated during other stages of the process to finalize the rule. The final rule will once again be subject to internal review by OMB.

PUBLICATION OF FINAL RULE

When the final rule is published in the Federal Register, it must stipulate the effective date, typically no less than 30 days after publication. Under the Congressional Review Act,
Congress will still have the option to overturn the rule or exercise its authority in other ways, by holding hearings, posing questions or imposing funding restrictions.

RULE TAKES EFFECT

Must occur by 2/12/2016 in order to avoid interruption in the OPT program.