

# Mobility: immigration alert

October 2022

## United States

### USCIS again extends COVID-19-related flexibilities

#### Executive summary

On 24 October 2022, U.S. Citizenship and Immigration Services (USCIS) announced it is extending the flexibilities for responding to requests, notices, and decisions issued in connection with certain immigration benefits and programs, including, but not limited to:

- ▶ Requests for evidence;
- ▶ Notices of intent to deny;
- ▶ Notices of intent to revoke;
- ▶ Notices of intent to rescind.

Under these continued flexibilities, USCIS will consider a response as timely received if the following conditions are met:

- ▶ The request or notice was issued between 1 March 2020 and 24 January 2023 (inclusive); and
- ▶ The response was received by USCIS within 60 calendar days after the due date set forth in the request or notice.

In addition, USCIS will consider Forms I-290B, Notice of Appeal or Motion, and Forms N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the *Immigration and Nationality Act*) where:

- ▶ USCIS issued a decision between 1 November 2021 and 24 January 2023 (inclusive); and
- ▶ The form was filed up to 90 calendar days from the issuance of that decision.

#### Background and analysis

Since 27 March 2020, USCIS has allowed additional time for petitioners and applicants to respond to certain requests and notices from the agency. This policy is meant to account for barriers to obtaining information and documentation caused by the COVID-19 pandemic, and it has been extended periodically since its inception. The last announcement, made on 25 July 2022, extended that flexibility until 23 October 2022.

We note that the flexibility policy does not require any showing of cause for the delay in responding to USCIS. As such, anyone required to respond to USCIS may take advantage of the additional time if the request, notice, or decision meets the eligibility requirements set out in the announcement. The additional 60 calendar days can be advantageous when preparing a successful response, particularly in cases involving complex facts or issues.

#### What this means

The announcement has several implications:

- ▶ Petitioners, applicants, and representatives who are responding to a request, notice, or decision should first review the issuance date carefully to make sure that they are eligible to take advantage of the additional flexibility afforded by the announcement.
- ▶ In the future, USCIS may limit or eliminate such flexibilities. Employers with a significant number of foreign national employees who choose to rely on such flexibility should monitor the situation and adjust accordingly to make sure responses are timely filed.



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- ▶ The strategies for future immigration benefit requests ought not be prepared with the assumption that such flexibility will continue to be available at their time of adjudication.

We will continue to monitor and review future developments. For additional information, or if you wish to discuss this further, please contact your EY Law LLP professional.

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