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# DHS Preps Proposal To End Work Authorization For Spouses

By [Suzanne Monyak](#)

Law360 (February 21, 2019, 4:19 PM EST) -- The Trump administration could soon release a closely watched proposal to strip employment authorization from as many as 90,000 spouses of H-1B visa holders, taking another step toward issuing a new regulation that attorneys say could discourage highly skilled immigration in the U.S.

The [U.S. Department of Homeland Security](#) on Wednesday sent the proposed rule to the [Office of Management and Budget](#) for review, the final step in the process before it will be published in the Federal Register. The draft regulation will seek to revoke work authorization for certain individuals on H-4 visas, which are reserved for dependent family members of H-1B specialty occupation workers.

The Trump administration's planned revocation of the H-4 work authorization rule — issued by then-President Barack Obama [in 2015](#) — has been met with a chorus of protests by lawmakers on both sides of the aisle, who claim that ending the rule would hinder the U.S.'s ability to attract talent abroad and would prevent these spouses, most of whom are women, from continuing their careers.

A typical H-4 beneficiary is a woman in her mid-20s to mid-30s. About 93 percent of the more than 90,000 individuals who have applied for H-4 employment authorization since 2015 are women, according to data from [U.S. Citizenship and Immigration Services](#).

"H-1B workers and their families are most successful when their spouses have the ability to contribute to their household income and our economy, and the freedom to use their skills and pursue their goals. It is an American value that everyone — regardless of gender — deserves to be able to use and enhance their skills, be financially self-sufficient, thrive mentally and physically, and pursue their dreams," Reps. Pramila Jayapal, D-Wash., and Mia Love, R-Utah wrote in a May [letter to DHS](#) signed by 130 lawmakers.

And while President Trump tweeted last month that H-1B holders can "rest assured" because "we want to encourage talented and highly skilled people to pursue career options in the U.S.," immigration attorneys have told Law360 that rescinding the H-4 rule could have the [opposite effect](#), instead leading potential applicants to take their talents elsewhere if their spouses are barred from working.

But the Obama-era H-4 rule has also drawn backlash by a group of American IT workers known as Save Jobs USA. The group brought a lawsuit in 2015 in D.C. federal court alleging that Obama exceeded his authority when his administration issued the rule, which Save Jobs claims incentivizes immigration and increases competition for U.S. jobs. That case is currently pending before the D.C. Circuit.

"DHS is conferring an incentive (spousal employment) on those competitors so that more of them will remain in competition with Save Jobs USA members," Save Jobs asserted in a recent briefing at the appeals court.

Save Jobs' suit was filed after Obama issued the H-4 rule as part of his administration's series of immigration-related executive orders, allowing H-4 visa holders to apply for employment authorization if their spouses have been granted a one-year extension of their H-1B visa beyond the six-year validity period and had their green card application approved.

But after President Donald Trump took office, his administration indicated it would not be interested in defending the Obama-era rule, and the D.C. Circuit agreed to pause the case for nearly a year while Trump's DHS [drafted a new one](#). The court agreed to remove the case from abeyance in December, and Save Jobs filed a [renewed opening brief](#) the following month.

The administration is expected to publish its proposal by March 18, when the government's response brief in the Save Jobs suit is due at the D.C. Circuit. The public will then have an opportunity to comment on the draft regulation.

--Additional reporting by Nicole Narea. Editing by Adam LoBelia.

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