AMERICAN IMMIGRATION LAWYERS ASSOCIATION

August 4, 2026

Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20746

Submitted via http://www.regulations.gov

Re: Department of Homeland Security, U.S. Citizenship and Immigration Services, Notice of Proposed Rulemaking; *Clarification of Discretionary Employment Authorization for Certain Aliens* (DHS Docket No. USCIS-2026-0067; CIS No. 2805-25; RIN 1615-AC98)

The American Immigration Lawyers Association (AILA) submits the following comment in opposition to the Department of Homeland Security (DHS) Notice of Proposed Rulemaking ("NPRM," or "proposed rule"), 91 Fed. Reg. 34352, DHS Docket No. USCIS-2026-0067 *Clarification of Discretionary Employment Authorization for Certain Aliens* (June 5, 2026).

AILA is a voluntary bar association of more than 18,000 immigration law professionals practicing, researching, and teaching in the field of immigration and nationality law. AILA's mission includes advancing the law pertaining to immigration and nationality and facilitating justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, lawful permanent residents, and other noncitizens regarding the application and interpretation of U.S. immigration laws.

I. Introduction

AILA respectfully urges DHS to withdraw the proposed rule in its entirety. The NPRM is legally deficient, economically unsound, administratively unworkable, and inconsistent with longstanding agency practice governing discretionary employment authorization.

The proposed rule would fundamentally alter the framework under which DHS exercises its longstanding discretionary authority to authorize employment for certain noncitizens, including individuals paroled into the United States, people granted deferred action, individuals with final orders of removal who remain under orders of supervision, and others with discretionary work permits, including Deferred Action for Childhood Arrivals (DACA) recipients, people seeking protection under the Violence Against Women Act, and H-4 spouses. Among other changes, the proposal would impose shortened employment authorization validity periods, require applicants to demonstrate economic necessity, establish new discretionary adjudicatory standards, require certain renewal applicants to satisfy employer E-Verify conditions, and expand circumstances under which previously issued employment authorization may terminate automatically.

These changes would have consequences extending far beyond the applicants themselves. They would disrupt employers who rely on stable work authorization systems, increase adjudicative burdens on USCIS, reduce labor force participation, diminish tax revenues, destabilize families, and increase the risk that otherwise work-authorized individuals will experience unnecessary interruptions in lawful employment. The proposal would also disproportionately harm survivors of domestic violence, human trafficking, gender-based violence, and other serious crimes whose ability to obtain and maintain employment authorization is often critical to their safety, independence, and long-term stability.

The NPRM does not adequately justify these sweeping policy changes. DHS has not demonstrated that the existing regulatory framework has failed, identified evidence of systemic abuse warranting such broad restrictions, or reasonably explained why less disruptive alternatives would not achieve its stated objectives. Instead, the proposal departs from decades of settled regulatory practice without adequately accounting for the substantial reliance interests created by that framework or the significant economic and humanitarian consequences of its proposed changes.

For these reasons, and those discussed below, DHS should withdraw the proposed rule. If the Department elects to proceed, it should substantially revise and repropose the rule to address the legal, operational, economic, and humanitarian deficiencies identified in these comments.

II. The Proposed Rule Would Cause Significant Economic, Operational, and Humanitarian Harm

The proposed rule would remove or destabilize lawful workers from the labor market, impose substantial new burdens on employers and USCIS, and harm families and communities that rely on continued access to work authorization. Employment authorization is not merely an administrative benefit; it is a critical component of immigration compliance, workforce stability, economic participation, and humanitarian protection. DHS has not adequately explained in the proposed rule why these harms are necessary, reasonable, or justified by evidence in the record.

A. Economic and Workforce Impacts

The proposed rule would remove or destabilize thousands of lawfully employed workers at a time when employers across numerous industries continue to depend upon predictable employment authorization systems. By imposing shortened validity periods, new economic-necessity requirements, additional documentary obligations, mandatory biometrics, and employer-based renewal conditions for certain applicants, the proposal would very likely increase employee turnover, recruitment and training costs, Form I-9 reverification obligations, and overall compliance uncertainty.[1] These burdens would fall particularly heavily on small businesses, health care providers, agricultural employers, seasonal industries, and employers operating in communities with significant immigrant workforces.

The proposal also creates substantial uncertainty regarding its own scope. Although the NPRM initially suggests that only limited categories of applicants are affected,[2] the proposed regulatory text is considerably broader and appears capable of reaching numerous discretionary employment authorization categories, including DACA recipients, asylum applicants, H-4 spouses, and others. DHS simultaneously acknowledges that it cannot reliably estimate how many individuals would ultimately lose employment authorization under the proposed framework.[3] If the agency cannot identify the population affected by its own proposal, employers cannot reasonably assess compliance obligations, forecast workforce needs, or prepare for implementation.

The economic effects extend well beyond individual employers and workers. Reduced employment authorization can be expected to diminish household income, consumer spending, and federal, state, and local tax revenues while increasing financial instability for mixed-status families and U.S. citizen children.[4] Although DHS acknowledges many of these consequences throughout the NPRM, it fails to explain why these substantial economic harms are justified by any demonstrated regulatory benefit.

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[1] "*Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants*," 89 Fed. Reg. 24628, 24628 (Apr. 8, 2024).
[2] 91 Fed. Reg. 34353.
[3] 91 Fed. Reg. 34357.
[4] *Effects of the Immigration Surge on the Federal Budget and the Economy*, Congressional Budget Office, July 23, 2024, https://www.cbo.gov/publication/60165.

<u>B. Operational and Administrative Impacts</u>

The proposal would significantly increase adjudicative complexity while providing little corresponding improvement in program integrity. The introduction of vague eligibility standards—including "economic necessity" and "significant countervailing public interests"—would inevitably generate additional requests for evidence, inconsistent adjudications, avoidable appeals, and increased processing times. Because these eligibility standards lack clarity, applicants will be unable to determine what evidence will satisfy them in the first instance; for example, there is no indication what level of need is sufficient or how adjudicators should evaluate circumstances such as medical expenses, caregiving responsibilities, recent victimization, or financial hardship. As a result, adjudicators with little meaningful regulatory guidance will likely apply these vague standards inconsistently.

The proposal would also require USCIS to devote additional resources to repeated biometric collection, discretionary balancing analyses, employer-verification requirements, and expanded factual inquiries into criminal history and employment circumstances. These procedural requirements would divert agency resources from timely adjudication, fraud detection, and national security priorities without any demonstrated improvement in adjudicative accuracy. DHS should eliminate the economic-necessity requirement and revise the discretionary framework to provide clear adjudicatory standards, relevant factors, flexible evidentiary requirements, and meaningful opportunities to respond to adverse information. Any criminal-conduct considerations should be limited to reliable, relevant, and individualized assessments.

<u>C. Humanitarian Consequences</u>

The populations affected by this proposal include individuals paroled for urgent humanitarian reasons or significant public benefit, recipients of deferred action, survivors of domestic violence, sexual assault, and human trafficking, individuals released under orders of supervision because removal is not presently practicable, and others who depend upon discretionary employment authorization to support themselves and their families. For many of these individuals, employment authorization is not merely an economic benefit—it is an essential safeguard against exploitation and instability. Survivors of abuse frequently remain in dangerous circumstances because of financial dependence or lack of lawful employment opportunities. Lawful employment enables survivors to secure housing, obtain medical care, support their children, and avoid further victimization. By imposing broad discretionary standards that fail to account adequately for trauma, coercive control, economic instability, or the long-term effects of victimization, the proposed rule undermines the humanitarian objectives that underlie the existing forms of immigration protection established by Congress.

These significant economic, operational, and humanitarian consequences underscore a broader concern: DHS has not demonstrated that the proposal represents reasoned decision-making supported by evidence or that its asserted objectives justify the substantial burdens the rule would impose. Those legal deficiencies are addressed below.

III. The Proposed Rule Does Not Reflect Reasoned Decision-Making Required by the Administrative Procedure Act

The APA requires agencies to engage in reasoned decision-making and prohibits agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." Although agencies retain discretion to revise existing policies, they must acknowledge when they are changing course, provide a reasoned explanation for the change, consider important reliance interests, and evaluate obvious alternatives before imposing significant new regulatory burdens.

DHS fails to meet that standard here because the NPRM does not adequately acknowledge the magnitude of the policy change, identify a reasoned basis for the change, connect the asserted rationale to the people and programs affected, address serious reliance interests, or consider less disruptive alternatives.[5] An agency must disclose the basis of its action and make findings sufficient to permit meaningful review, including a rational connection between the facts found and the choice made.[6] An agency must examine the relevant data, consider important aspects of the problem, and articulate a satisfactory explanation for its action. Further, an unexplained inconsistency in agency policy, particularly where regulated parties have relied on the prior policy, is a reason for finding the new policy arbitrary and capricious.[7] DHS must consider important aspects of the problem, including alternatives and serious reliance interests, when rescinding or materially altering an existing immigration policy.[8]

The proposed rule falls well short of these requirements. DHS seeks to replace a decades-old framework governing discretionary employment authorization with a substantially more restrictive regime, yet the NPRM neither demonstrates that the existing framework has failed nor adequately explains why the proposed restrictions are necessary to achieve the agency's stated objectives. Instead, the proposal rests largely on generalized concerns regarding unauthorized migration, public safety, and labor-market effects without establishing a meaningful connection between those concerns and the populations whose employment authorization would be restricted. Equally significant, DHS does not meaningfully address the extensive reliance interests that its own longstanding regulations have created for applicants, employers, families, state and local governments, and communities. Nor does the agency seriously consider less disruptive alternatives that would address any legitimate program-integrity concerns while avoiding many of the proposal's most significant harms. For these reasons, the proposed rule does not satisfy the APA's requirement of reasoned decision-making.

<u>A. DHS Has Not Adequately Justified Its Departure From a Longstanding Employment Authorization Framework</u>

For decades, DHS and its predecessor agencies have exercised their authority[9] through regulations authorizing employment for defined categories of noncitizens whose circumstances warrant discretionary employment authorization. That framework, reflected principally in 8 C.F.R. § 274a.12, has promoted orderly immigration administration by permitting individuals who are present with the government's knowledge and authorization—or whose removal is not presently practicable—to support themselves lawfully while their immigration matters remain pending or while they comply with DHS supervision.

The NPRM would fundamentally alter that longstanding framework by imposing significantly more restrictive eligibility standards, shortened validity periods, additional evidentiary burdens, expanded discretionary denial authority, and new renewal conditions. An agency changing policy must display awareness that it is changing position and provide good reasons for the new policy.[10] Yet in this proposed rule, DHS does not adequately acknowledge the magnitude of this policy change or explain why the factual and policy judgments underlying decades of prior practice no longer warrant continued adherence. An agency need not demonstrate that its prior policy was unlawful before adopting a new one, but it must acknowledge that it is changing course and provide a reasoned explanation for doing so. Where, as here, the agency departs from a settled regulatory framework upon which regulated parties have relied for many years, the obligation to explain the change is particularly important. The NPRM does not satisfy that obligation.

<u>B. DHS Does Not Demonstrate That the Proposed Restrictions Address the Problems It Identifies</u>

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[5] *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 167–68 (1962).
[6] *Motor Vehicle Manufacturers Ass'n v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43 (1983).
[7] *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016).
[8] *Department of Homeland Security v. Regents of the University of California*, 591 U.S. 1 (2020).
[9] INA § 274A(h)(3), 8 U.S.C. § 1324a(h)(3).
[10] *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-516 (2009).

The NPRM repeatedly invokes concerns regarding unauthorized migration, unauthorized employment, public safety, and program integrity. While those are legitimate governmental interests, DHS does not demonstrate that the proposed restrictions materially advance those objectives for the populations affected by this rule. The proposal applies to individuals whom DHS already knows, has screened, or continues to supervise through existing immigration processes, including parolees admitted for urgent humanitarian reasons or significant public benefit, recipients of deferred action, individuals released pursuant to orders of supervision, and others who must affirmatively apply for discretionary employment authorization. Many are already subject to biometric screening, reporting requirements, individualized adjudication, or ongoing agency oversight.

The NPRM identifies little evidence that these existing discretionary employment authorization categories have generated systemic fraud or abuse requiring the sweeping restrictions proposed here. Nor does DHS explain why existing enforcement authorities—including individualized adjudication, fraud investigations, background checks, and case-by-case discretionary determinations—are insufficient to address any demonstrated concerns. The proposed biometric requirements would impose additional costs on applicants and USCIS without demonstrating a corresponding benefit to program integrity. Requiring repeated biometric collection where DHS already possesses usable information would create unnecessary delays, expenses, and administrative burdens.

The disconnect between DHS's stated objectives and the populations affected by the rule is particularly significant. Restricting employment authorization for individuals already participating in lawful immigration processes does not directly address unauthorized employment or unlawful migration. Instead, it limits lawful employment opportunities for individuals who are already known to DHS while imposing substantial collateral costs on employers, families, and communities. As the Supreme Court explained, agency action cannot be “unmoored” from the purposes of the governing statute or bear no rational relationship to the objective it purports to advance.

C. The NPRM’s Internal Inconsistencies Undermine Its Explanation

The proposal also contains significant internal inconsistencies that further undermine its explanation. For example, DHS argues that restricting discretionary employment authorization will reduce unauthorized employment while simultaneously acknowledging that many affected individuals are currently employed lawfully pursuant to valid employment authorization documents.[11] Rather than reducing unauthorized employment, the proposal risks increasing employment instability by making lawful employment more difficult to obtain and maintain.

Similarly, DHS acknowledges throughout the NPRM that the proposal may reduce household income, increase poverty, disrupt employers, and impose significant administrative burdens on both applicants and USCIS.[12] Yet the agency offers little explanation why these acknowledged costs are justified by corresponding program-integrity, enforcement, or public-safety gains. Reasoned decision-making requires more than identifying competing considerations; it requires the agency to explain why it chose one course over another. The NPRM does not adequately reconcile these competing conclusions or explain why the substantial burdens it identifies are warranted.[13]

D. DHS Does Not Meaningfully Address Reliance Interests or Less Disruptive Alternatives

The proposal fails to grapple adequately with the substantial reliance interests created by DHS's own regulations and longstanding practices. Individuals have made employment, educational, housing, caregiving, and financial decisions in reliance on the availability of discretionary employment authorization

[11] 91 Fed. Reg. 34390-34393, 34470.
[12] See e.g. 91 Fed. Reg. 34357.
[13] See *State Farm*, 463 U.S. at 43; *Judulang v. Holder*, 565 U.S. 42, 55–64 (2011).

and established renewal practices. Employers have invested in recruiting, training, and retaining employees whose continued work authorization has long been governed by predictable regulatory standards. State and local governments likewise benefit when individuals authorized to remain in the United States can work lawfully, pay taxes, and support themselves and their families.

Although DHS acknowledges some of these consequences, the NPRM does not give them meaningful consideration or seriously evaluate obvious alternatives that could address any legitimate program-integrity concerns while minimizing disruption. Such alternatives include preserving existing validity periods, grandfathering current employment authorization holders and pending renewal applicants, expanding automatic extensions for timely filed renewals, reusing previously collected biometrics, strengthening adjudicative guidance, and addressing substantiated fraud concerns through targeted enforcement rather than broad categorical restrictions. The APA requires agencies to consider important reliance interests and reasonable alternatives before fundamentally altering established regulatory frameworks.[14]

The NPRM does not adequately explain why these less disruptive approaches would fail to accomplish the agency's objectives.[15]

IV. The Proposed Rule Fails to Satisfy Other Statutory and Regulatory Analysis Requirements

The deficiencies discussed above are reinforced by DHS's failure to satisfy several statutory and regulatory analytical requirements that govern significant rulemakings. Congress and successive administrations have required agencies to assess the economic effects of proposed regulations, consider less burdensome alternatives, evaluate impacts on state and local governments, and accurately estimate new paperwork burdens before promulgating significant rules. These requirements are not procedural formalities. They are designed to improve agency decision-making by ensuring that significant regulatory choices are informed by a careful assessment of costs, burdens, and practical consequences.

Here, DHS's analyses under the Regulatory Flexibility Act (RFA), the Unfunded Mandates Reform Act (UMRA), Executive Order 13132, and the Paperwork Reduction Act (PRA) each reflect significant analytical gaps. Considered together, they further demonstrate that DHS has not adequately evaluated the full consequences of the proposed rule before seeking to substantially revise the existing employment authorization framework.

<u>A. DHS's RFA Analysis Does Not Adequately Assess the Rule's Impact on Small Entities</u>

The RFA requires an agency preparing an Initial Regulatory Flexibility Analysis to describe the projected compliance requirements of the proposed rule, estimate the classes of small entities that will be affected, and consider significant alternatives that would minimize economic impacts on those entities. These obligations are intended to ensure that agencies meaningfully evaluate the effects of proposed regulations on small businesses and other small entities before adopting new regulatory requirements. Courts review RFA compliance under the APA's arbitrary-and-capricious standard and require agencies to make a reasonable, good-faith effort to carry out the statute's requirements. DHS's analysis does not reflect that reasonable, good-faith effort. DHS acknowledges that the proposed rule will impose indirect costs on employers, including employee turnover, recruitment and training expenses, reverification obligations, and implementation costs associated with E-Verify participation. Yet the agency states that it cannot estimate the number of employers affected because it does not collect information regarding the employers of EAD holders. DHS has not explained why it cannot use available data points to provide at least a bounded estimate of the small entity impacts the RFA specifically requires it to examine.

That explanation is difficult to reconcile with other portions of the NPRM. Elsewhere, DHS provides detailed estimates regarding application volumes, unit processing costs, filing burdens, and aggregate compliance

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[14] 5 U.S.C. § 706(2)(A), *Encino Motorcars,* 579 U.S. at 221–22.
[15] See *Regents*, 591 U.S. 1.

costs. Although perfect precision may not be possible, the RFA does not require certainty. It requires a reasonable effort to evaluate foreseeable impacts on small entities where feasible, and to consider significant alternatives that would minimize those impacts.[16]

DHS does not explain why the information already available to the agency cannot be used to develop reasonable estimates or bounded ranges reflecting likely impacts on small businesses. The agency's consideration of regulatory alternatives is similarly limited. DHS concludes that no alternatives are necessary because the rule imposes no direct costs on small entities.[17] That conclusion overlooks the substantial indirect burdens DHS itself identifies, including increased workforce disruption, additional hiring and training costs, and expanded compliance obligations. In short, DHS fails to adequately consider alternatives as required by the RFA that would reduce those burdens, including phased implementation, transitional protections, or other approaches that would lessen disruption while preserving any legitimate agency objectives.

B. DHS Does Not Adequately Support Its Conclusion Under the UMRA

Under the Unfunded Mandates Reform Act (UMRA), when a rule contains a federal mandate expected to impose costs above the statutory threshold, agencies generally must prepare a written statement analyzing the costs and consider regulatory alternatives. DHS concludes that the proposed rule does not impose a federal mandate within the meaning of the UMRA because any private-sector costs would result from voluntary business decisions rather than legally enforceable obligations.

The NPRM, however, suggests a more complicated reality. Employers who currently employ affected workers may face a practical choice created by the proposed rule: enroll in E-Verify or lose the ability to continue employing workers whose employment authorization becomes contingent upon participation in that program.[18] This would condition continued employment authorization on employer participation decisions rather than the applicant’s eligibility. Whether characterized as a legal mandate or a regulatory consequence, that choice represents a foreseeable economic impact directly attributable to the proposed rule. This would reduce worker mobility, create unequal outcomes among similarly situated applicants, and impose additional burdens on employers. Likewise, restricting employment authorization for individuals on orders of supervision would undermine the purpose of supervision by making it more difficult for individuals to support themselves, comply with reporting obligations, and remain connected to DHS.

DHS acknowledges that it cannot estimate how many employers would incur E-Verify implementation costs or calculate the aggregate costs associated with those decisions.[19] Without that information, the agency has not adequately explained the basis for concluding that private-sector expenditures necessarily remain below UMRA's statutory threshold. DHS should remove the E-Verify renewal requirement and preserve employment authorization eligibility for individuals on orders of supervision and other categories where work authorization promotes lawful compliance and orderly administration. If DHS intends to keep this requirement, it should either provide a reasoned quantitative basis for its conclusion or acknowledge the limitations of the available data and explain how those limitations affect its UMRA analysis.

C. DHS's Paperwork Reduction Act Analysis Does Not Fully Account for the New Information Collection Burdens

The Paperwork Reduction Act requires agencies to estimate the actual reporting, recordkeeping, and disclosure burdens associated with proposed information collections so that the Office of Management and Budget and the public may meaningfully evaluate those burdens. The proposed rule would impose several

[16] See 5 U.S.C. § 603(b)–(c); *North Carolina Fisheries Ass'n, Inc. v. Daley*, 16 F. Supp. 2d 647, 652–53 (E.D. Va. 1997).
[17] 91 Fed. Reg 34473.
[18] 91 Fed. Reg. 34464.
[19] 91 Fed. Reg. 34470.

new documentary and procedural requirements on affected applicants, including submission of Form I-765WS and supporting financial documentation, mandatory biometric collection, and, for certain renewal applicants, submission of an employer's E-Verify Company Identification Number.

The accompanying PRA analysis, however, reports only aggregate burden estimates for Forms I-765 and I-131.[20] It does not distinguish between burdens that already exist under current practice and the incremental burdens created by this proposed rule. Without that distinction, the public cannot meaningfully evaluate the additional time, expense, and administrative effort attributable to the proposal itself. The inclusion of burden estimates for Form I-131 likewise is not explained. Because the NPRM principally addresses discretionary employment authorization standards rather than travel authorization, DHS should clarify the relationship between those estimates and the proposed amendments or remove them if they are unrelated to this rulemaking. Accordingly, DHS should revise the PRA analysis to identify and quantify the incremental burdens associated with the new financial documentation, biometric collection, and E-Verify identification requirements applicable to the affected employment authorization categories.

D. Recommendations

For the reasons discussed above, DHS should withdraw the proposed rule.

At a minimum before finalizing this rule, DHS should:

1. develop a reasonable estimate of the proposal's effects on small entities using the information already available to the agency;
2. meaningfully evaluate regulatory alternatives that would reduce indirect burdens on employers and applicants, as required by 5 U.S.C. § 603(c);
3. reconcile the federalism analysis with the socioeconomic consequences acknowledged elsewhere in the NPRM;
4. revise the PRA analysis to identify the incremental paperwork burdens attributable to the proposed rule; and
5. reconsider the cumulative economic and operational consequences of the proposal before issuing any final rule.

V. The Proposed Rule Raises Significant Fairness Concerns That DHS Has Not Adequately Addressed

In addition to the statutory deficiencies discussed above, the proposed rule raises significant questions concerning procedural fairness and the administration of previously granted employment authorization. Although DHS has broad authority to establish standards governing discretionary employment authorization, that discretion is not exercised in a vacuum. Where a rule would alter longstanding regulatory expectations or terminate previously granted employment authorization, DHS should carefully consider the procedural protections, reliance interests, and transitional measures necessary to ensure fair and orderly implementation.

The NPRM does not adequately address these issues. Instead, it proposes new grounds for automatic termination, broad discretionary standards, and significant changes to renewal eligibility without explaining how affected individuals will receive notice, correct agency errors, or avoid unnecessary interruptions in lawful employment.

A. The NPRM Does Not Adequately Address Reliance Interests Created by Existing Employment Authorization

As discussed in Section III, DHS has not meaningfully accounted for the substantial reliance interests created by decades of regulatory practice governing discretionary employment authorization. Retroactive rules are

[20] 91 Fed. Reg. 34455-34458.

disfavored absent express congressional authorization. More importantly, even a prospective rule that changes an agency's prior policy must be supported by a reasoned explanation that accounts for legitimate reliance on the prior policy.[21]

Those reliance interests extend beyond eligibility to renew employment authorization. Individuals have structured employment, housing, education, caregiving responsibilities, medical treatment, and long-term financial planning around regulatory expectations that have remained stable for many years. Employers likewise have invested substantial resources in recruiting and retaining employees whose continued employment has depended upon those established regulatory practices. Although the NPRM recognizes that the proposal may reduce household income and increase financial hardship for affected families,[22] it does not meaningfully evaluate transitional measures that would mitigate those consequences. Such measures could include preserving existing validity periods, grandfathering current EAD holders and pending renewal applicants, adopting phased implementation dates, or providing temporary transition periods for individuals whose employment authorization would otherwise be disrupted. The absence of meaningful transitional protections magnifies both the practical disruption and the legal concerns associated with the proposal.

<u>B. The Proposed Rule Should Provide Clear Standards and Meaningful Procedural Protections</u>

The proposal also creates significant uncertainty by introducing broad discretionary standards without sufficiently explaining how they will be applied. Agencies can adopt standards, but they must explain those standards sufficiently so that regulated parties and implementing officials understand how they will be applied and how courts can review them.[23] For example, the proposed "significant countervailing public interests" standard provides insufficient guidance regarding the factors adjudicators should consider, the weight to be assigned to competing considerations, or the evidence applicants may submit to demonstrate that discretion should be exercised favorably.[24] The criminal-conduct provisions would permit adverse consideration based on arrests, allegations, or other conduct that may not reflect a relevant or reliable basis for denying employment authorization. The proposed criminal-conduct provisions and economic-necessity requirement[25] rely on broadly worded standards that may be applied inconsistently absent additional regulatory guidance.

DHS intends to automatically terminate previously issued employment authorization without adequate notice, correction procedures, or transition protections. This may result in job loss caused by administrative errors, delayed processing, or unclear status changes rather than individualized eligibility concerns. Additionally, shorter validity periods would increase renewal volume, filing burdens, and the risk of employment gaps caused by USCIS processing delays. DHS should provide advance notice before termination, establish procedures to correct administrative errors, preserve existing validity periods, expand automatic extensions for timely filed renewals, and adopt transition protections for current EAD holders and pending renewal applicants. Although agencies may retain discretionary authority, regulated parties must nevertheless have sufficient notice to understand how that discretion will be exercised in practice. Clear standards promote consistent adjudication, improve public confidence in agency decision-making, reduce unnecessary requests for evidence, and facilitate meaningful administrative and judicial review.

Accordingly, if DHS proceeds with the proposed rule, it should adopt objective adjudicatory standards, identify the principal factors governing discretionary determinations, provide applicants a meaningful opportunity to respond to adverse information, and clearly describe the procedures applicable to automatic termination decisions.

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[21] *Fox TV Stations,* 556 U.S. at 515–16.
[22] 91 Fed. Reg. 34428.
[23] See *State Farm*, 463 U.S. at 43
[24] 91 Fed. Reg. 34356.
[25] 91 Fed. Reg. 34352-34478 *passim*.

C. Recommendations

For the reasons discussed above, DHS should withdraw the proposed rule.

If DHS nevertheless proceeds, it should substantially revise the proposal to:

1. provide clear notice before terminating previously issued employment authorization;
2. establish meaningful procedures for correcting factual or administrative errors before employment authorization terminates;
3. define key discretionary standards, including "significant countervailing public interests," with sufficient specificity to promote consistent adjudication;
4. preserve existing validity periods and provide transitional protections—including grandfathering current EAD holders and pending renewal applicants, phased implementation, or temporary transition periods—to account for established reliance interests; and
5. provide applicants with a meaningful opportunity to respond to adverse information before discretionary employment authorization is denied or terminated.

VI. DHS's Economic Analysis Does Not Adequately Account for the Costs of the Proposed Rule

DHS's economic analysis does not adequately capture the full consequences of restricting employment authorization for affected individuals, employers, families, and communities. The NPRM identifies certain administrative costs associated with implementation,[26] but does not fully account for broader economic effects, including lost wages, reduced federal, state, and local tax revenue, employer recruitment and training costs, workforce disruption, reduced consumer spending, and increased financial hardship for affected households.

These effects are particularly significant because the proposed rule would affect individuals who are already known to DHS, have been authorized to remain in the United States under existing immigration processes, and are seeking permission to work through lawful channels. Reducing access to employment authorization for these populations would impose substantial costs while providing no demonstrated corresponding benefit. DHS must evaluate whether the asserted benefits of the rule justify these foreseeable economic harms. An analysis that identifies significant costs but does not meaningfully quantify or weigh those costs against concrete benefits does not provide an adequate basis for a major regulatory change. As discussed above, DHS should also evaluate less disruptive alternatives that would address any legitimate program-integrity concerns while avoiding unnecessary economic disruption.

VII. Recommendations

AILA urges DHS to withdraw the proposed rule in its entirety. If DHS proceeds, it should substantially revise the proposal to ensure that any final rule is supported by reasoned analysis, protects reliance interests, minimizes unnecessary burdens, and promotes consistent administration of employment authorization.

At a minimum, DHS should:

1. **Remove the proposed economic-necessity requirement** and avoid vague eligibility standards that invite inconsistent adjudication.
2. **Revise the discretionary framework** by defining relevant factors, limiting reliance on unreliable adverse information, and providing applicants a meaningful opportunity to respond to adverse evidence.
3. **Eliminate the proposed E-Verify renewal requirement** and avoid conditioning individual employment authorization on employer enrollment decisions.

[26] 91 Fed. Reg. 34470.

4. **Preserve employment authorization eligibility** for parolees, deferred action recipients, individuals on orders of supervision, and other affected categories where employment authorization promotes lawful compliance and orderly administration.
5. **Limit unnecessary biometric and documentary burdens** by reusing available information and avoiding duplicative requirements.
6. **Provide procedural protections for automatic termination provisions**, including notice, correction procedures, and transition protections.
7. **Preserve existing validity periods and adopt transition measures** for current EAD holders and pending renewal applicants.
8. **Revise the regulatory analyses required by law**, including the RFA, UMRA, federalism, and PRA analyses, to accurately account for the proposal's economic, administrative, and practical effects.
9. **Consider less disruptive alternatives** that address any legitimate agency concerns through targeted, evidence-based measures rather than broad restrictions.

If DHS proceeds with any regulatory changes, it should adopt targeted measures that address identified concerns without unnecessarily disrupting lawful employment, employer operations, or agency administration. Rather than imposing categorical restrictions, DHS should consider alternatives including:

- maintaining existing eligibility standards for affected employment authorization categories;
- providing clearer adjudication guidance and training;
- addressing substantiated fraud concerns through individualized review;
- reducing duplicative evidentiary requirements;
- reusing previously collected biometrics where appropriate;
- expanding automatic extensions for timely filed renewal applications;
- preserving existing validity periods; and
- providing transition protections for current EAD holders and pending renewal applicants.

These alternatives would allow DHS to pursue legitimate administrative and program-integrity objectives while reducing unnecessary burdens on applicants, employers, USCIS, and communities. If DHS adopts any final rule affecting current employment authorization categories, it should provide sufficient implementation time, clear public guidance, and transition measures to prevent avoidable employment disruptions.

VIII. Conclusion

Employment authorization allows individuals who are already known to DHS and participating in lawful immigration processes to support themselves and their families, contribute to the economy, comply with immigration requirements, and remain engaged with their communities. The proposed rule would disrupt that framework without demonstrating that the resulting harms are justified by corresponding benefits. It would impose substantial burdens on workers, employers, families, and USCIS while introducing standards that risk inconsistent adjudication and unnecessary administrative complexity.

For these reasons, DHS should withdraw the proposed rule. If DHS proceeds, it should substantially revise the proposal to ensure that any final rule is consistent with statutory requirements, accounts for reliance interests and economic consequences, and adopts targeted, evidence-based approaches rather than sweeping restrictions.

Sincerely,
American Immigration Lawyers Association