November 26, 2025

Business and Foreign Workers Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
5900 Capital Gateway Drive
Camp Springs, MD 20746

Submitted via http://www.regulations.gov

Re: Comments on Removal of the Automatic Extension of Employment Authorization Documents (USCIS-2025-0271)

To Whom it May Concern:

The American Immigration Lawyers Association (AILA) and the American Immigration Council (Council) submit the following comment in response to the Interim Final Rule (IFR) eliminating automatic extensions for the validity of employment authorization documents, as announced at 90 Fed. Reg. 48799 (October 30, 2025).

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. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws.

The Council is a non-profit organization established to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws and protect the legal rights of noncitizens. The Council frequently appears before federal courts on issues relating to the interpretation of the Immigration and Nationality Act and its implementing regulations.

AILA and the Council urge DHS to withdraw the IFR because it violates the Administrative Procedure Act's core requirement of notice-and-comment rulemaking with a 60-day comment period. The agency's invocation of the good cause exception is unsupported and fails to demonstrate that bypassing fulsome public participation was necessary or in the public interest. Moreover, the stated justifications for issuing the IFR are arbitrary and capricious, as they lack a reasoned explanation, disregard reliance interests, and do not show that immediate implementation outweighs the benefits of transparency and stakeholder input.

AILA Doc. No. 25112600. (Posted 11/26/25)

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I. THE IFR SHOULD BE WITHDRAWN BECAUSE IT FAILS TO COMPLY WITH THE ADMINISTRATIVE PROCEDURE ACT'S NOTICE AND COMMENT REQUIREMENT

DHS' decision to publish the IFR eliminating the auto-extension of up to 540 days for timely filed applications for renewal of an Employment Authorization Document (EAD) violates the Administrative Procedure Act (APA)[1] because it unlawfully bypasses the statutory requirements for notice-and-comment rulemaking. The APA mandates that agencies provide the public advance notice of proposed rules and a meaningful opportunity to comment before the rule takes effect, except in narrowly defined "good cause" circumstances. The agency's reliance on the good cause exception here is factually inappropriate, legally insufficient, and inconsistent with judicial precedent.[2]

Specifically, section 553 of the APA requires agencies to:

(1) publish a Notice of Proposed Rulemaking (NPRM) in the Federal Register;

(2) allow interested persons an opportunity to comment; and

[1] 5 U.S.C. § 553(b)(B).

[2] *See, e.g. AFL-CIO v. NLRB*, 57 F.4th 1023 (D.C. Cir. 2023)(If an agency action reflects a substantive value judgment or alters substantive rights or interests of regulated parties, it does not fall within the good cause exception).

(3) consider those comments before promulgating a final rule.

An agency may forego this process only when it finds "good cause" that notice and comment are "impracticable, unnecessary, or contrary to the public interest."[3] The "good cause" exception is narrowly construed, and courts have consistently required a specific, evidence-based showing that delay would cause concrete and immediate harm.[4] Unsubstantiated allegations cannot justify invoking this exception.

The IFR asserts that the ''impracticable'' and "contrary to the public interest" prongs of the good cause exception excuse compliance with the statutory notice-and-comment requirement in emergency situations, or where the delay caused by the APA's notice and comment procedures would result in serious harm to life, property, or an immediate threat to public safety.[5] However, the administration's justification is almost completely devoid of specific factual allegations of harm or threat to public safety. In the preamble of the IFR, the administration claims that the automatic extension creates a security vulnerability because the agency would not have the opportunity to assess potential security concerns and bad actors could earn money to potentially finance nefarious activities.[6] The IFR cites one incident in Boulder, Colorado where a noncitizen attacked peaceful protestors to highlight "the critical and urgent need to act to mitigate the immediate risk" of the rule on Americans.[7] However, the IFR fails to explain how that incident is related to the automatic work authorization extension provision or why this one incident, even if related, would justify the impact the termination of this rule would have on hundreds of thousands of workers and their U.S. employers.

Most importantly, the IFR fails to recognize that individuals applying to renew an EAD have already been thoroughly vetted by the agency on at least one occasion, when they applied for their initial EAD, and likely on other occasions when they applied for their underlying status. Thus, the harm the rule purports to prevent is not as urgent as the agency claims it to be and definitely does not excuse bypassing the usual notice-and-comment rulemaking requirement.

The IFR substantively alters the continuity of employment authorization for thousands of noncitizens and affected employers, who will suffer direct and severe harm despite the agency's claims of reduced processing times. The IFR eliminates automatic EAD extensions for individuals who have been previously vetted and determined to be eligible for work authorization, thus creating the very real probability that they will experience gaps in their employment and ability to support themselves while they wait on the government. Unlike the IFR's amorphous claims of harm, the direct, tangible damage to EAD applicants is as self-evident as it is severe. The agency's attempt to bootstrap its assertion of "urgent need" based on a single criminal event is disingenuous and unsupported by data

[3] 5 U.S.C. § 553(b)(B).
[4] AILA and the Council have repeatedly made clear that the good cause exception "is to be narrowly construed and only reluctantly countenanced." *Mack Trucks, Inc. v. EPA*, 682 F.3d 87, 93 (D.C. Cir. 2012) (quoting *Utility Solid Waste Activities Grp. v. E*PA, 236 F.3d 749, 754 (D.C. Cir. 2001)).
[5] 90 FR 48812, 48813 (October 30, 2025).
[6] 90 Fed. Reg. at 48806.
[7] 90 Fed. Reg. at 48808.

or evidence of causation between that event and the rule providing interim work authorization. When removing a provision in regulations, DHS must consider the benefits and advantages of the existing provision against the costs and disadvantages of removing the existing automatic extension, including the reliance interests that regulated parties have gained in longstanding practice of automatic extensions .

In addition, the post-promulgation comment period offered by DHS is insufficient to bypass the APA's notice-and-comment procedures. Courts have repeatedly held that such after-the-fact opportunities cannot substitute for prior notice and comment.[8] Once a rule takes effect, the ability to influence the agency's decision-making is, as a practical matter, diminished. Therefore, the IFR's "interim" label does not mitigate its procedural defects.

DHS failed to include evidence drawing a nexus between automatic extensions and security risks; instead DHS only cited to a newspaper article about the security incident in Colorado as a potential outcome of what might occur if DHS maintains the automatic extension provision.[9] Absent concrete examples or an explanation to substantiate DHS's concern of elevated security risks, DHS's invocation of the good cause exception under 5 U.S.C. § 553(b)(B) is unlawful.

DHS's decision to issue the IFR violates the APA's procedural safeguards, as its purported claim of urgency is unfounded. The rule substantively impacts regulated parties, and post-hoc comment opportunities do not cure the procedural defect. Accordingly, we strongly urge DHS to comply with the APA by withdrawing the IFR.

II. THE PROFFERED REASONS FOR THE IFR ARE ARBITRARY AND CAPRICIOUS

DHS grounds its elimination of the 540-day automatic extension of work authorization for pending EAD applicants on a single asserted rationale: to prioritize the proper vetting and screening of applicants before granting a new period of employment authorization.[10] This stated rationale suffers from multiple flaws, including lack of evidentiary support, inconsistency with DHS's own prior factual findings, internal contradictions, and constitutional concerns, rendering it unlawful under the APA.[11]

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[8] "Permitting the submission of views after the effective date is no substitute for the right of interested persons to make their views known to the agency in time to influence the rule making process in a meaningful way." *U.S. Steel Corp. v. EPA*, 595 F.2d 207, 214 (5th Cir.) (quoting *City of New York v. Diamond*, 379 F. Supp. 503, 517 (S.D.N.Y. 1974)), *rehearing granted in part on other ground*, 598 F.2d 915 (5th Cir. 1979).

[9] *Cap. Area Immigrants' Rts. Coal. v. Trump*, 471 F. Supp. 3d 25, 46 (D.D.C. 2020) (Good cause exception not satisfied where agencies only provided a single example of potential adverse consequences and "offer[ed] no other data or information that persuasively supports their prediction of a surge" in border crossings before rule took effect).

[10] 2025 IFR, 90 Fed. Reg. at 48799–48800, 48803, 48806–17, 48819

[11] *See* 5 U.S.C. § 706(2)(A), (B); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (agency action arbitrary and capricious where explanation runs counter to the evidence or fails to consider important aspects of the problem); *Dep't of Com. v. New York*, 588 U.S. 752, 755 (2019) (invalidating action where there is a "significant mismatch" between decision and proffered rationale); *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016) (agency's unexplained change in position arbitrary and

The IFR Reverses DHS's Prior Factual Findings Without Presenting Evidence

In 2016, DHS published a final rule that created automatic extensions for certain EAD applicants subject to limitations.[12] When explaining the expected impacts of the automatic extension provision, DHS explained that it would "[enhance] the ability to ensure all national security verification checks are completed," and that it "reduces opportunities for fraud and better accommodates increased security measures."[13] Only a year ago, DHS again promulgated a final rule, which signaled the sufficiency of security and fraud-screening measures in the automatic extension process.[14] departure.[15] DHS's prior reasoning was sound. Renewal applicants have already undergone full biographic and biometric screening, been found eligible both for their underlying status and employment authorization as a matter of discretion, and, by definition, have timely filed for renewal in the same eligibility category. DHS also previously concluded that these safeguards reasonably assured continued eligibility.[16] Nothing in the 2025 IFR identifies a reason to now doubt those conclusions.

The IFR Provides No Evidence That Automatic Extensions Hamper Vetting

The 2025 IFR cites no data showing that automatic extensions have ever prevented USCIS from identifying a security concern or acting on one. Millions of EAD holders have worked under automatic extensions for nearly a decade. If this framework genuinely compromised national security, DHS would be able to point to at least some pattern of security-based denials belatedly discovered after an automatic extension took effect, though it does not.

Instead, the rule relies on a single anecdote involving an individual in Colorado.[17] The IFR does not explain eliminating automatic extensions would have prevented it. A solitary, unexplained example cannot justify a wholesale regulatory reversal that will affect hundreds of thousands of workers and their employers.

Terminating the 540-day extension does not accelerate or expand the agency's ability to screen applicants. It only strips work authorization from individuals while routine adjudicative processes continue.

DHS's Reasoning is Internally Inconsistent

The IFR repeatedly states that USCIS does not expect future backlogs, projecting that renewal adjudications will remain timely because overall EAD filings will allegedly decline.[18] According to

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capricious); *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 23–26 (2020) (setting aside agency decision for failure to consider important aspects and reliance interests).

[12] 81 Fed. Reg. 82398 (Nov. 18, 2016).

[13] 80 Fed. Reg. 82398, 821407.

[14] 89 Fed. Reg. 101208. (Dec. 14, 2024).

[15] *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009) (agency reversing position must acknowledge the change and provide a reasoned justification, particularly where new policy rests on contrary factual findings).

[16] 81 Fed. Reg. 81900 (Dec. 31, 2015).

[17] See 90 Fed. Reg. at 48,808–09, 48,813–14.

[18] 90 Fed. Reg. at 48809, 48813 n.136.

DHS, recent actions to limit or eliminate certain humanitarian benefits mean that "USCIS resources will be freed" and delays will diminish.[19]

These assertions cannot be reconciled with the rule's central claim that USCIS needs more time to complete vetting and cannot reliably adjudicate renewals before current EADs expire. Either USCIS reasonably anticipates timely processing—meaning automatic extensions pose no issue—or it foresees ongoing delays. Both propositions cannot simultaneously be true. Arbitrary and capricious reasoning includes exactly this type of irreconcilable logic.

The agency's projections are also highly speculative. DHS presumes that future administrations will maintain restrictions on humanitarian pathways, that no new TPS, parole, or statutory protections will be introduced, and that demand for employment authorization will decline. But the immigration landscape regularly shifts. Congress could expand immigration pathways. Future administrations may create or reinstate humanitarian programs. Significantly, USCIS has wrestled with EAD-processing delays for years—including before the recent humanitarian programs the IFR uses as its baseline. That history, not conjecture, demonstrates why automatic extensions exist. Importantly, the automatic extensions are only triggered if delays occur, so retaining the rule as codified provides an important safeguard for workers and their U.S. employers when the government fails to act in a timely manner.

The IFR Misstates How Security Vetting Actually Works

The IFR suggests that allowing 540 additional days of work authorization "impedes" DHS from identifying derogatory information.[20] However, automatic extensions do not slow, limit, or prevent security screening. All relevant background-check processes occur independently of whether a worker has an unexpired EAD. If USCIS identifies new information indicating a security concern, it remains free to deny the renewal application immediately, which terminates the automatic extension and ends work authorization at once.

Moreover, determining eligibility for immigration benefits, particularly where there is criminal, national-security, or other complexity, often requires significant analysis that generally happens at the time of final adjudication of an immigration benefit application.

Determining eligibility for an immigration benefit—especially where issues of criminal history, national-security indicators, or other discretionary factors are involved—almost always requires a fact-intensive, context-specific analysis that is conducted at the point of final adjudication of the underlying benefit request, not during the pendency of an interim renewal of employment authorization.

For example, many criminal offenses require an officer to assess the precise statutory elements, the factual basis of the conviction, the sentence imposed, the circumstances surrounding the offense, and whether the conduct falls within a ground of inadmissibility or deportability. Even where a ground may apply, Congress has created numerous waivers that require balancing equities, humanitarian considerations, hardship to U.S. family members, rehabilitation, and other case-specific factors. These are not matters that can be resolved at the instant an arrest record appears in a database; they require deliberate, formal adjudication with access to a complete record.

[19] Id.
[20] 90 Fed. Reg. at 48808.

The same is true for national-security-related indicators. Many security flags require follow-up investigation, interagency coordination, and a full review of classified or sensitive information that can take considerable time to evaluate. A "hit" in a screening database does not automatically mean the person is a threat or ineligible for an immigration benefit. Officers must determine whether the information actually relates to the applicant, whether it is credible, whether it meets the statutory or regulatory standard for denial, and whether mitigating circumstances exist. These assessments occur within the structured adjudicative framework, not during the mechanical, threshold review of an EAD-renewal request.

USCIS retains full authority to deny a renewal application at any time, immediately terminating the automatic extension and the individual's employment authorization. The IFR offers no explanation for why this existing authority is inadequate, nor any data showing that automatic extensions have prevented USCIS from responding appropriately to new information.

Without evidence that automatic extensions have impeded eligibility assessments—and given the inherently complex and adjudicatory nature of those assessments—the IFR's suggestion that a grant of interim work authorization somehow interferes with screening is inconsistent with the realities of immigration-benefit adjudication.

By the agency's admission alone, when an individual applies for an EAD, whether initially or for a renewal, there are potentially three stages where the agency could and does conduct security screening: (1) during the pre-screening stage, the agency conducts "initial security checks based on biographical information provided by the applicant," (2) during the adjudication stage, "[i]f the ISO determines that the applicant is eligible, additional security checks may be conducted," and (3) "[p]rior to issuing the final decision, USCIS may update or conduct additional security checks."[21] When an individual applies for a renewal, the same three security opportunities continue to exist, which means that continuous vetting is occurring while the renewal application is pending and the individual has interim work authorization.

Whether under the 540-day automatic extension rule, or any of the prior rules addressing automatic extensions of a shorter duration, an applicant must still undergo any necessary security screening the agency conducts before receiving the actual renewal of their employment authorization. USCIS controls when screening occurs.

DHS's Reliance on Ideological Vetting to Justify the IFR Raises Constitutional Concerns

The IFR further insinuates that USCIS must evaluate whether renewal applicants "bear hostile attitudes" toward the United States, its culture, or its institutions.[22] That suggestion raises serious First Amendment concerns. Employment authorization may not be conditioned on ideological conformity. An agency action that rests on unconstitutional factors cannot be sustained.[23] If DHS believes it must screen for ideological views, that rationale cannot support depriving hundreds of thousands of noncitizens of the ability to work and support their families and harm U.S. employers relying on these workers. The Constitution bars such reasoning.

[21] 90 Fed. Reg. 48799, 48802.
[22] 90 Fed. Reg. at 48807.
[23] See 5 U.S.C. § 706(2)(B).

The IFR's Regulatory Impact Analysis is Deficient

The IFR's regulatory impact analysis is woefully deficient and especially stark when measured against the requirements of Executive Order 12866.[24] These authorities require agencies to rigorously quantify the costs and benefits of significant regulatory actions, select approaches that maximize net benefits, and use the best available techniques to assess present and future impacts. Agencies must present ranges, scenario analyses, and expected-value estimates, not simply cite uncertainty as a reason to forgo quantification. The APA further demands reasoned decision-making and consideration of all important aspects of a problem, including economic impacts.[25]

In prior rulemakings on the very same issue, USCIS provided detailed, data-driven estimates of the number of renewal applicants at risk of losing work authorization, the duration of lapses, and the associated economic costs—calculating billions in lost wages and employer turnover costs.[26] This IFR, by contrast, offers only qualitative descriptions of potential harms and does not attempt to monetize the effects of its policy change. The agency acknowledges prior estimates (e.g., 293,000 to 449,000 renewal applicants at risk) but fails to update or model these figures for the current policy, despite having access to relevant data. Instead, DHS cites to "factors contributing to a high degree of uncertainty" as the reason for its failure to attempt to estimate the number of renewal EAD applicants that would be affected by the rule.[27] DHS's reliance on optimistic assumptions about future processing times, without supporting data or contingency analysis, further weakens its justification for the rule and deprives stakeholders of a meaningful basis for evaluating the rule's trade-offs.

At the very least, the IFR should have contained a reasoned estimate of the number of people likely to be impacted in the short term (with ranges or scenarios), an estimate of the economic costs of their work authorization lapses (lost wages, output, etc., drawing from the methods DHS already has used), and a clear comparison of those costs against the purported benefits of the rule (which themselves should be quantified or at least described in concrete terms—e.g., how many fraudulent renewals might be avoided, how much enforcement resources saved, etc.). If DHS had completed this analysis, it would have had to consider the enormous economic downsides of the rule and consider whether mitigation measures or a different policy approach is warranted. For example, DHS could have considered retaining a shorter auto-extension (say 180 days) as a compromise, or

[24] E.O. 12866 (1993); OMB Circular A-4 (available at https://www.federalregister.gov/documents/2003/10/09/03-25606/circular-a-4-regulatory-analysis).
[25] *Michigan v. EPA*, 576 U.S. 743.((2015)
[26] 87 FR 26614 (May 4, 2022); 89 FR 101208 (Dec. 13, 2024).
[27] DHS repeatedly justifies its failure to engage in a reasoned analysis by citing its "lack of data," "unknown factors," "uncertainty," and simply stating that it is "difficult" to project future processing times without any further insight. DHS goes so far as to recite the formula it would use if it had decided to engage in a meaningful analysis, citing an hourly wage range of $20.26-$62.21 from the 2024 rule and explaining how lost earnings could be calculated by multiplying wage, hours, number of affected workers and duration of lapse, but summarily declines to plug in any actual values. In other words, DHS seems to recognize the risk this rule poses to EAD applicants, employers, and the economy as a whole and has decided the economic risk is worth taking without bothering to inform the public of how big a risk it is. 90 Fed. Reg 208, 44816, 44817.

phasing this policy change in as backlogs shrink, to reduce harm. Such alternatives are mentioned only briefly in the IFR's preamble and were not seriously analyzed.[28]

The IFR Failed to Account for the Economic Costs of This Rule to Workers and Businesses

As discussed above, EAD auto-extensions of some form have been in use for years.[29] They have vacillated in length to accommodate practical realities. More importantly, for the last 3.5 years, a 540-day extension period has been used because USCIS simply cannot produce EADs in a timely manner.[30] These production delays are well-documented and no fault of the applicant. Instead, they have been caused by an influx of EAD requests that exceed USCIS's production capacity.[31] and decreases in production capacity due to COVID-19 precautions.[32] While production delays have improved slightly, nearly 20% of EAD renewal applications remain pending more than 180 days.[33] As discussed more fully herein,[34] USCIS generally does not permit a noncitizen to file an application to renew their EAD more than 180 days prior to an existing EAD's expiration.[35] Assuming for the sake of argument every noncitizen files to renew their EAD 179 days prior to their existing card's expiration date, 20% will still experience a gap in work authorization. Not only is the gap in work authorization a problem for the noncitizens, who must contend with how they will provide for themselves and their family during this time, but it is also a problem for employers who rely on the noncitizens for labor and may experience work stoppages, staffing shortages, and turnover costs.

USCIS previously found that if the extension period were decreased to 180 days that upwards of 20,000 individuals would lose work authorization each month starting in October of 2025.[36] USCIS has recognized the "continuing impact on employers' business continuity and related effects caused by gaps in employment authorization" and justified its 2022 Temporary Final Rule increasing the extension period to 540 days on the "$4,037.6 million in turnover costs for the separation and replacement" of employees who would have experienced a gap in work authorization when the

[28] When considering alternatives, DHS only considered the possibility of reverting to a 180-day period, rather than any other options that could mitigate harm. Its consideration of that single alternative was also devoid of any impact analysis, concluding simply that any benefit would be outweighed by the possibility of derogatory information surfacing about an applicant. 90 Fed. Reg. at 48810.
[29] 52 Fed Reg 6216 at 16228 (1987) (implementing the Immigration Reform and Control Act of 1986, Pub. L. 99-603, (IRCA) and providing 120 days of interim employment authorization should the agency fail to adjudicate an application for employment authorization within 60 days of the date of receipt.).
[30] 89 Fed. Reg. No. 240 at 101250 (December 13, 2024); Office of the Citizenship & Immigration Services Ombudsman, Annual Report to Congress (June 28, 2024), U.S. Dep't of Homeland Security, https://www.dhs.gov/sites/default/files/2024-07/24_0628_cisomb_2024-annual-report.pdf
[31] Office of the Citizenship & Immigration Services Ombudsman, Annual Report to Congress at 4.
[32] 87 Fed. Reg. No 86 at 26618 (May 4, 2022).
[33] Department of Homeland Security, USCIS, Office of Performance and Quality I-765, Application for Employment Authorization Counts of Pending Petitions by Days Pending For All Eligible Categories and (c)(8) Pending Asylum Category As of June 30, 2025 available at https://www.uscis.gov/sites/default/files/document/data/i765_p_allcat_c08_fy2025_q3.xlsx
[34] See infra Section 2.
[35] See e.g. https://www.uscis.gov/newsroom/news-releases/dhs-ends-automatic-extension-of-employment-authorization.
[36] 89 Fed. Reg. 101208, 101251.

average processing time for renewals was 5.4 months.[37] Even with advances in processing capabilities and a decrease in initial applications, processing times for the impacted classifications still exceed 180 days as discussed above.

USCIS acknowledges this and the detrimental impact the elimination of the automatic extension period will have on noncitizens and their employers.[38] However, USCIS refuses to engage in any economic analysis as part of this rulemaking; sidelining an astounding $4 billion in turnover costs and ignoring the additional burdens placed on employers and Form I-9 vendors to retool systems, workflows, and policies.

The categories of noncitizens reliant on EAD renewals include asylum applicants, refugees and asylees, Temporary Protected Status (TPS) beneficiaries, spouses of intracompany transferees (L-2) spouses of certain specialty occupation workers (H-4), and applicants for adjustment of status (pending green cards), among others. These individuals are integral members of the U.S. workforce. Many have been working legally for years, paying taxes, and filling roles in industries ranging from healthcare and education to manufacturing and service sectors. Independent research and even federal reports have documented that noncitizens in these categories are net contributors to the economy.[39]

By omitting quantification of major costs, DHS cannot convincingly claim it balanced this rule's benefits against its costs—indeed, the IFR provides no numeric cost at all, even though prior rules showed the costs could be in the billions of dollars. This not only undermines the quality of DHS's decision-making on this matter but also violates the APA's requirement that agencies consider all "important aspects" of a problem.

The immediacy of the IFR placed substantial burdens on employers and industry

The economic impact of the rule is further exacerbated by its immediate effect. By issuing an IFR, USCIS is causing substantial harm to employers and the vendors that they rely on for immigration compliance. Employers were left without sufficient time to implement the new rule in a deliberate

[37] 87 Fed. Reg. 26614, 26618 (May 4, 2022).
[38] *Id*.
[39] *Economic Projections for Asylum Seekers and New Immigrants: U.S. and State-Level Data,* David Dyssegaard Kallick and Anthony Capote, Immigration Research Initiative, February 7, 2024, available at https://immresearch.org/publications/economic-projections-for-asylum-seekers-and-new-immigrants-u-s-and-50-states. See also, *The Fiscal Impact of Refugees and Asylees at the Federal, State, and Local Levels from 2005-2019*, Robin Ghertner, Suzanne Macartney, and Meredith Dost, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, February 2024, available at https://aspe.hhs.gov/sites/default/files/documents/28fe4e756499bdab08b4e6cb3b952e22/aspe-report-refugee-fiscal-impact.pdf. (Finding that asylees (who often start as asylum applicants with EADs) have a strongly positive fiscal impact); *The Contributions of Temporary Protected Status Holders to the U.S. Economy,* American Immigration Council, September 2023, available at https://www.americanimmigrationcouncil.org/blog/economic-contributions-tps-holders/; "Hurting Americans in Order to Hurt Foreigners," Ike Brannon and M. Kevin McGee, Cato Institute, *Regulation*, Spring 2019, available at https://www.cato.org/regulation/spring-2019/hurting-americans-order-hurt-foreigners.

manner, which will lead to unintentional noncompliance, increased training costs, and possibly even civil exposure under state and federal anti-discrimination laws.

Millions of noncitizens use an EAD to evidence identity and work authorization.[40] Large organizations devote extensive resources to ensuring workforce continuity and compliance with the employer sanctions provisions of the INA. These resources include, but are not limited to, internal trainings, SharePoint pages, policies, work instructions, and job aids. Every change that USCIS makes – and there are many – takes time to implement. When a new change is implemented or operationalized, legal, operational, budgetary, and workflow issues are all considered. This is a time-consuming process that requires thoughtfulness and deliberation so as to not run afoul of the employer sanctions *or* anti-discrimination provisions of the INA or state law. And then, once an implementation plan is made, policies have to be updated and distributed, and training has to occur on the new policies.

Even in the best of scenarios, this process takes days, if not weeks. The immediate effect of this rule compressed the timeline to *hours*. USCIS, of all agencies, should understand the difficulty in implementing highly technical and fact-intensive changes across a large organization. The primary justification for the immediate effect of this rule – to prevent a flood of renewal applications by noncitizens attempting to take advantage of the 540-day extension period – pales in comparison to the burden its immediate effect placed on employers and industry.

Many employers rely on complex systems that are built in accordance with USCIS regulations. This change required many immediate system changes, lest the vendors fall out of compliance. A vendor falling out of compliance with USCIS can implicate many things, not least termination of the agreement they have with a company. Vendors were forced to retool immediately in light of this rule; doing so placed an enormous burden both in resource cost (cost to make the required updates in a rushed manner) but also opportunity cost (those same resources were working on other initiatives that had to be delayed).

III. USCIS CANNOT ADJUDICATE APPLICATIONS TIMELY

If the agency completes its screenings and timely adjudicates the applications, then the automatic extension is not triggered. The agency's failure to timely adjudicate applications for employment authorization has existed for years, as evidenced through its self-reporting of various promulgated rules: creation of an interim employment authorization document where processing times exceeded 90 days, implementation of an automatic extension period of up to 180 days, and, more recently, the automatic extension period of up to 540 days.[41] In these rules, the agency cited reasons that warranted the extensions, including those related to fiscal constraints, staffing issues, and the surge in current and anticipated applications. While the agency is completely eliminating the 540-day automatic extension in one fell swoop, it has not addressed the historical reasons that have plagued the agency from timely adjudicating the applications.

[40] FY 2023 – more than 3mm approved.
[41] 90 Fed. Reg. 48799, 48803-48804.

From a review of the processing times on USCIS' website, the agency is not able to timely adjudicate EAD applications. USCIS tells applicants not to file renewal applications more than 180 days in advance of the expiration date.[42] The following are some classifications that no longer benefit from the automatic extension and currently exceed 180 days in processing 80% of such applications:

- noncitizens admitted as refugees (20.5 months)
- noncitizens with pending asylum applications (6.5 months)
- L-2 spouses (7 months)
- noncitizens with pending adjustment of status applications (7 months)
- noncitizens with pending application for suspension of deportation (10.5 months).[43]

While the agency proffers excuses as to why the additional adjudicatory times were needed in the past, there is no evidence that those concerns will go away with the introduction of the IFR.

Further, the agency reported to Congress that it received 225,595 EAD applications for September 2025. While the "average processing time" reported is 3.7 months, they are also reporting that 911,946 applications have been pending for over 6 months. While not all 911,946 applications would have benefited from the 540-day automatic extension, a substantial number of applications take far more than 180 days to process, effectively guaranteeing that these individuals and their employers will face a disruption in their employment authorization.

IV. CONCLUSION

The IFR is an unsound policy that violates the APA. By relying on flawed and misleading logic, DHS has failed to provide the public with accurate notice of the true costs of the rule. The IFR should be withdrawn for failure to provide sufficient notice or advance opportunity to the public to comment, to consider the significant economic burdens that would be imposed on the public, and to consider alternatives that would be less burdensome for the public.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION and

THE AMERICAN IMMIGRATION COUNCIL

[42] 90 Fed. Reg. At 48802.
[43] *See* egov.uscis.gov/processing-times/ (Nov. 23, 2025).