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December 1, 2025

Submitted via regulations.gov

Samantha Deshommès, Chief Regulatory Officer
Office of Policy & Strategy
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
5900 Capital Gateway Drive
Camp Springs, MD 20746

Re: Interim Final Rule, *Removal of the Automatic Extension of Employment Authorization Documents* (CIS No. 2826-25; DHS Docket No. USCIS-2025-0271).

Dear Chief Deshommès:

The Center for Strategy and Applied Insights at Fragomen (the Center) appreciates the opportunity to comment on the Department of Homeland Security's (DHS or Department) interim final rule (IFR) titled "Removal of the Automatic Extension of Employment Authorization Documents."¹ Drawing on lessons learned from the Fragomen firm's long experience as an immigration advisor to employers in the United States and around the world, the Center seeks to identify and analyze issues and trends key in immigration systems, and to offer insight-based suggestions to help those systems function fairly, transparently, and efficiently.

Two things relevant to this IFR have been true for the nearly the last four decades. First, the agency has not had enough adjudications resources to consistently decide requests to renew work authorization documents, filed on time by eligible workers, before existing documents expire. Second, administrations of both parties have recognized that causing eligible workers to have to stop work under these circumstances was not an acceptable policy outcome. Those administrations have therefore put in place a series of solutions to provide temporary work authorization, and allow eligible workers to stay at work, while agency adjudicators

¹ Removal of the Automatic Extension of Employment Authorization Documents, 90 Fed. Reg. 48, 799 (Oct. 30, 2025) (codified at 8 C.F.R. pt. 274a) (IFR).

were able to catch up to the workload. The first remains true. With this IFR, USCIS has departed from the second.

Automatic extensions of employment authorization, the most recent of the mechanisms established to address the adjudications shortfall, have been critical to prevent disruptions that harm U.S. employers and the labor market. The IFR ends this mechanism, outside the normally required process for notice and input during agency deliberation, without adequately assessing the economic consequences. Instead, DHS has, without the good cause needed for such a step, bypassed notice and comment and, without a reasonable justification for cutting process corners, abruptly ended the decades-long practice designed to safeguard against gaps in employment caused by USCIS processing delays.

For these reasons, explained in greater depth below, we urge the Department to withdraw this IFR while it properly evaluates its economic impact and reevaluates the policy considerations.

Automatic Extensions Are Essential When Adjudication Delays Would Interrupt Employment

When the immigration agency is not able to issue work authorization renewals to otherwise eligible workers, before existing permissions expire, those otherwise eligible workers must stop work. Recognizing that this is neither fair nor in the national interest – that it disrupts the American economy and imposes severe economic hardship on individual workers and their families – the government has long established mechanisms to allow those otherwise eligible workers to continue working while the agency is able to catch up to its workload. This is an obvious and longstanding approach. For nearly four decades, the automatic extension mechanism for Employment Authorization Documents (EADs) has been a critical tool for maintaining employment continuity amid USCIS processing delays. The methods that the government has employed to address the problem have evolved, but the need to address the problem has been apparent, and met, for as long as the problem has existed.

In implementing the Immigration Reform and Control Act of 1986, the legacy Immigration and Naturalization Service (INS) recognized that adjudication delays could lead to gaps in employment authorization.² To address this, INS required that any EAD application (initial or renewal) not adjudicated within 60 days would automatically result in the grant of interim employment authorization for 120 days.³ This policy reflected the agency's acknowledgment of the need for continued evidence of work authorization during processing delays and aimed to prevent unnecessary disruptions to lawful employment.

The interim EAD process, which required USCIS to receive in-person visits from applicants to USCIS field offices and to provide temporary documents if renewal applications remained pending beyond the established timeframe, proved too burdensome and inconsistent in practice. Yet the problem of adjudication times too slow to keep up with EAD expirations for eligible workers persisted, so in 2016 USCIS replaced the interim EAD process with a new

² Control of Employment of Aliens, 52 Fed. Reg. 16,216, 16,220 (May 1, 1987).

³ *Id.*

mechanism.⁴ The 2016 regulation provided for an automatic extension of work authorization to foreign nationals who timely filed their EAD renewal applications—based on the same, still-valid underlying status—so they may remain employment authorized for up to 180 days while their applications were adjudicated. This mechanism was designed to reduce reliance on emergency stopgap measures necessitated by the government’s adjudication delays, and to ensure stability for workers, employers, and the agency itself. As DHS explained, the automatic extension was “more secure.”⁵

Abruptly removing the automatic extension will result in widespread lapses in work authorization, leading to job loss for hundreds of thousands of legally present individuals and disruptions for employers and business operations. In its 2024 rulemaking, DHS increased the automatic extension from 180 days to 540 to account for further increased adjudication delays.⁶ In so doing, DHS estimated that without the automatic extension, up to 800,000 renewal applicants could face a lapse in employment authorization through no fault of their own.⁷ DHS maintains in this IFR that “proper planning may ameliorate the risk of losing valid employment authorization...”⁸ Based on both historical trends and current data, though, it appears virtually certain that some significant number of eligible workers will apply to renew their EAD 180 days in advance of expiration but wait many more months for an adjudication.⁹ It is also important to note that USCIS issues renewal EADs with overlapping, not sequential, validity dates, effectively reducing the EAD’s validity period. In addition to the primary consequence of interruption to work, to income, and to services needed by American employers, the rule threatens access to state-issued benefits such as driver’s licenses, particularly for those who rely on EADs to meet REAL ID requirements. These disruptions are not speculative. They are foreseeable and quantifiable, as DHS acknowledged in its 2022 temporary final rule, which extended the auto-extension period to 540 days to mitigate the impact of USCIS backlogs.¹⁰

Impact on U.S. Employers and the Labor Market

Employers across sectors rely heavily on timely employment authorization renewals to maintain stable operations and comply with federal law. The automatic extension framework has been a cornerstone of workforce planning, particularly for industries such as healthcare, technology, education, and manufacturing that serve critical American interests and depend on

⁴ Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers, 81 Fed. Reg. 82,398 (Nov. 18, 2016).

⁵ *Id.*

⁶ Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants, 89 Fed. Reg. 101,208 (Dec. 13, 2024) (2024 rule).

⁷ *Id.*

⁸ IFR at 48,810, 48,817.

⁹ U.S. Citizenship & Immigration Servs., Case Processing Times, <https://egov.uscis.gov/processing-times/>; *see also* <https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data> (as of June 30, 2025, USCIS had 797,351 EAD renewal applications pending, out of which 165,893 – over 20 percent – were pending for 180 days or more).

¹⁰ Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants, 87 Fed. Reg. 26,614 (May 4, 2022).

significant proportions of EAD-holding employees. Without this safeguard, employers face immediate and significant operational and compliance challenges. Even when renewal applications are filed months in advance, prolonged adjudication delays result in sudden work stoppages, forcing employers to reallocate responsibilities, suspend projects, or terminate trained employees to remain in compliance with employment eligibility verification requirements.

The removal of the automatic extension also exposes employers to heightened risk under federal and state labor laws. Employers must choose between violating I-9 compliance obligations or losing essential talent—an untenable position that undermines both legal certainty and workforce stability. These disruptions translate into measurable business losses, including recruiting and training costs, productivity reductions, and project delays. At scale, such impacts compound across industries, undermining national competitiveness and constraining economic growth.

The government’s decision to impose this policy immediately exacerbates these concerns because employers did not have warning to adjust their filing timelines, which will cause unavoidable work authorization gaps. The current system has enabled employers to plan around predictable renewal timelines. Removing that predictability will introduce inefficiencies that ripple throughout the broader labor market.

DHS’s Abrupt Publication of the IFR Violates the Administrative Procedure Act

The IFR raises serious procedural concerns under the Administrative Procedure Act (APA), 5 U.S.C. § 553. DHS’s justification for next-day implementation does not provide the good cause that must exist for an agency to bypass notice and comment rulemaking. EAD renewal timing is tied to the expiration of the current document, not to any sudden or unpredictable surge in filings. Seemingly contrary to the explanation in the IFR, there is no evident risk of a “rush” or “flood” in renewal applications,¹¹ since renewals are naturally staggered based on individual and known validity periods. Compounding the harm from the change was the extraordinary suddenness. The rule was not listed on the Unified Agenda or the regulatory information dashboard until October 30, 2025. According to RegInfo.gov, the IFR was submitted to the Office of Management and Budget’s Office of Information and Regulatory Affairs (OIRA), on October 29 and posted for public inspection the same day.

This timeline not only deprived the regulated public of both notice and an opportunity to comment, it marked a radical departure from the traditional process of careful OIRA review and deliberation. This review has been crucial to the strength of the American regulatory system, a part of the process that has helped administrations of both parties to exercise executive authority with maximum effectiveness. It is impossible to envision meaningful OIRA review—a step that is not only conceptually essential but required under Executive Order 12866—in a single day. The glancing process for this significant regulatory action is especially troubling given the scale of the impact and the reliance interests built over years of consistent contrary policy.

¹¹ IFR at 48813.

DHS Improperly Invokes the “Good Cause” Exception

The rule misuses the “good cause” exception to bypass notice-and-comment requirements. Good cause may be established where the notice and comment process is “impracticable, unnecessary, or contrary to the public interest.”¹² The IFR meets none of these conditions. It is not impracticable, in that there is no emergency or urgent need for the abrupt removal of the automatic extension. It is not unnecessary, given that the IFR represents a radical shift in policy affecting potentially hundreds of thousands of workers and their employers. Nor would notice and comment be contrary to the public interest. Rather, it would serve the public interest to provide notice and an opportunity to comment, and to prepare, instead of contending with an unnecessarily chaotic rollout of a drastic change disrupting the lives of workers, business operations, the labor market, and the economy.

DHS relies on a single violent incident to justify this approach. This justification is perplexing, since EAD renewal is not a status-granting benefit and does not alter vetting frequency. It also extrapolates without a basis. The agency repeatedly characterizes renewal applicants as potential “bad actors” without evidence, suggesting they may use employment to finance nefarious activities—an assertion that is speculative and unsupported. This framing not only lacks evidentiary basis but also stigmatizes a broad population of lawfully present individuals who have complied with all requirements of their legal immigration status. Whether an individual’s EAD is automatically extended, or not, has little, if any, impact on the ability to remain in the United States. As DHS has previously explained, asylum seekers and other applicants are continuously vetted and, if derogatory information arises, the extension of the EAD does not prevent the agency from pursuing removal, detention, or other enforcement actions. Nor does this rule add or accelerate any vetting steps. With or without the automatic extension, the renewal applicant will not be re-vetted until the EAD renewal is eventually adjudicated.

The IFR Does Not Implicate “Foreign Affairs”

The “foreign affairs” exception to notice and comment cannot properly be applied to this rulemaking.¹³ DHS assertion of that exception falls outside of not only the traditional legal contours of the foreign affairs exception, but even of the new standards asserted by the Department of State, which seek to stretch the “foreign affairs” exception to “efforts ... to control the status, entry, and exit of people ... across the borders of the United States.”¹⁴ The categories of EAD renewals eligible for automatic extension pertain to persons who are already lawfully present in the United States. These categories include refugees, dependent spouses of nonimmigrant workers, and applicants for asylum and adjustment of status to lawful permanent residence. EAD renewals are not status-granting benefits. The IFR does not concern entry, admission, or immigration status. Rather, continuation of employment authorization relates to the verification and control of work authorization, and the domestic labor market.

¹² 8 U.S.C. § 553(b)(4)(B); see *Mack Trucks Inc. v. EPA*, 682 F.3d 87, 93 (D.C. Cir. 2012) (explaining that the “good cause exception ‘is to be narrowly construed and only reluctantly countenanced’”) (citation omitted).

¹³ 8 U.S.C. § 553(a)(1).

¹⁴ Determination: Foreign Affairs Functions of the United States, 90 Fed. Reg. 12, 220 (Mar. 14, 2025).

DHS's justification, that international remittances may be affected, does not retrieve this rulemaking into the foreign affairs sphere, because it is speculative and unsupported by evidence or analysis. DHS's rationale does not meet the threshold for invoking the foreign affairs exemption under the APA.

The IFR's Economic Analysis is Incomplete and Unsupported

One of the most important responsibilities of the rulemaking agency and the Office of Management and Budget in the regulatory process is to assess clearly and carefully, beforehand, the economic impact of a planned rule change. The economic analysis in the IFR fails to meet the standards required for economically significant rules. Such rules must be supported by a clear statement of need, a thorough examination of alternative approaches, and a detailed benefit-cost analysis.¹⁵ The economic analysis of this IFR does not reach what is required. DHS states that it cannot estimate the number of affected renewal applicants. It is not evident why this would be the case. DHS has access to detailed issuance and renewal data from recent years and quarters. USCIS data shows, for example, that over 1.3 million renewal applications were received in the first three quarters of Fiscal Year 2025, 1.2 million were received in Fiscal Year 2024, and 390,000 in Fiscal Year 2023.¹⁶ This data should provide at least a start. The rule also declines to quantify productivity losses or turnover costs, elements that were addressed in the 2024 rule with detailed estimates of economic impact. DHS does speculate that renewal filings will decrease, but this projection does not account for the number of current EAD holders who will need to renew or the implications of shortened validity periods, which may require more frequent renewals.

The IFR Fails to Address USCIS's Underlying Operational Challenges

Fundamentally, the IFR fails to address the underlying reason why the automatic extension for EAD renewals is needed in the first place: USCIS's persistent backlog. The automatic extension mechanism was specifically designed to mitigate these delays and provide a more secure and predictable system. Yet, the IFR offers no alternative solution, no proposed improvements to processing times, and no data to support its assumptions. DHS disregards viable options such as delaying the effective date or streamlining adjudications to reduce reliance on automatic extensions. There is no indication that EAD renewals will be prioritized; instead, they are likely to remain deprioritized in favor of categories with court-mandated timelines, such as certain asylum applicants. Even if renewal receipts decline, EAD adjudications, like most USCIS processes, are likely to take more time given, among other factors, the departure from streamlined case processing. As the Fiscal Year 2025 third quarter data show, USCIS backlogs and processing times are increasing dramatically across the board. This trend highlights the points emphasized at the outset of this comment: that agency adjudication processes cannot keep pace with its caseload of timely filed requests from eligible workers to renew their evidence of work authorization, and that USCIS should provide—as it has recognized for

¹⁵ Exec. Order No. 12,866, 58 FR 51,735 (Oct. 4, 1993).

¹⁶ U.S. Citizenship & Immigration Servs., Immigration and Citizenship Data, <https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data> (last visited Nov. 4, 2025).

decades—some effective mechanism to prevent that fact from causing the interruption of employment and resulting harm to those workers and their families, to their employers, and to the American economy.

Conclusion

DHS should withdraw the IFR. This is an important issue that merits a transparent, evidence-based rulemaking process that includes meaningful public input.

Respectfully,

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