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Division of Humanitarian Affairs
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: Notice of Proposed Rulemaking, Employment Authorization Reform for Asylum Applicants (DHS Docket No. USCIS-2025-0370; RIN 1615-AC97)

To Whom It May Concern:

The Center for Strategy and Applied Insights at Fragomen (the Center) appreciates the opportunity to comment on the Department of Homeland Security (DHS)/U.S. Citizenship and Immigration Services (USCIS)'s notice of proposed rulemaking titled "Employment Authorization Reform for Asylum Applicants."[1]

Drawing on Fragomen's long experience advising employers across the U.S. economy, the Center focuses this comment on the rule's economic, labor-market, and compliance impacts, rather than on the important humanitarian consequences that other commenters will address in detail. As explained below, the proposed rule would impose substantial economic harm on employers and the U.S. economy by sharply restricting access to work authorization for lawfully present asylum applicants at a time of persistent workforce shortages. It exceeds DHS's statutory authority by converting agency backlogs into a de facto bar on employment authorization, destabilizing the predictable system Congress contemplated and on which employers rely for compliance. Further, the rule's economic analysis fails to consider research showing that asylum-authorized workers increase employment, wages, and economic output, and that restricting work authorization neither improves vetting nor reduces asylum backlogs. All-in-all, the rule would reduce the available lawful workforce, increase turnover and

[1] Employment Authorization Reform for Asylum Applicants, 91 Fed. Reg. 8,616 (Feb. 23, 2026) (proposed rule).

compliance risk for employers, and shift the consequence of agency processing backlogs onto businesses and the broader economy.

For these reasons, the Center urges DHS to withdraw the proposed rule and preserve a predictable, statutorily grounded system that allows asylum applicants to apply for employment authorization after the period Congress prescribed, while USCIS adjudicates those requests in a timely and administrable manner.

Summary of the Proposed Rule

The proposed rule would fundamentally alter the regulatory framework governing employment authorization for asylum applicants and indeed restrict it altogether. DHS proposes to (1) extend the waiting period to apply for an asylum-based Employment Authorization Document ("EAD") from 150 to 365 days; (2) replace the current 30-day adjudication deadline with a flexible 180-day processing period; (3) pause acceptance of initial asylum-based EAD applications whenever average affirmative asylum processing times exceed 180 days; and (4) impose new eligibility bars and discretionary standards not required by statute. DHS acknowledges that these changes would prevent large numbers of lawfully present asylum applicants from working for prolonged periods, resulting in substantial wage losses and broader economic effects.

As explained below, these changes would have consequences that extend well beyond individual applicants and directly affect employers, labor markets, and the broader economy.

The Rule Would Harm Employers, Business Interests, and the U.S. Economy

The proposed rule would sharply reduce the supply of work-authorized labor and, as a result, impose direct and predictable harm on employers, workers, and the broader U.S. economy. Asylum applicants are lawfully present while their applications are pending and, under the law, permitted to apply for employment authorization after a 180-day waiting period. DHS's proposal would, without regard to employer demand or labor market conditions, more than triple the minimum time many applicants must wait before entering or reentering the workforce.

DHS's economic rationale rests in part on an assumption that asylum-authorized workers displace U.S. workers, an assumption that is called into question by empirical evidence. That assumption ignores recent research confirming that asylum-authorized workers do not displace U.S. workers.[2] An analysis of 450 to 600 U.S. commuting zones during the recent asylum surge shows that local labor markets receiving higher asylum inflows experienced *increases*, rather than decreases, in employment rates for native-born workers, U.S. citizens, and the broader incumbent workforce, along with rising wages and falling unemployment.[3] These patterns are

[2] Michael A. Clemens, Amy Marmer Nice & Natalia Rigol, Comment on Employment Authorization Reform for Asylum Applicants: Economic Evidence on Labor Markets, Productivity, and Filing Incentives (Apr. 7, 2026), submitted to DHS Docket No. USCIS-2025-0370.
[3] *Id*. at 2–3, 6-7.

the opposite of what would be expected if asylum seekers were simply replacing existing workers one-for-one.

The contraction of authorized labor supply that this proposal would cause would exacerbate existing labor market tightness across key sectors of the U.S. economy. Data shows sustained gaps between job openings and available workers, particularly in industries where asylum seekers are employed in higher concentrations, such as construction, health care, accommodation and food services, and transportation.[4] Sector-level analysis confirms that employment gains associated with asylum inflows are concentrated in lower-wage service industries, particularly leisure and hospitality, sectors that have faced persistent staffing pressures in recent years.[5]

Removing access to tens of thousands of work-authorized employees from these sectors would directly impair employers' ability to staff operations, meet consumer demand, and maintain productivity. These effects would be felt most acutely by small and mid-sized employers with limited access to alternative labor pipelines.

DHS's own economic analysis estimates that the proposed rule would result in annual wage losses. The proposed rule estimates annual wage losses ranging from approximately $34.6 billion to $126.6 billion, driven by prolonged periods in which asylum applicants would be barred from lawful employment.[6] In recent rulemaking governing the H-2A program, the Department of Labor (DOL) has repeatedly acknowledged that U.S. agricultural employers face chronic difficulty recruiting sufficient domestic workers and rely heavily on noncitizen labor to sustain operations. While agriculture provides a clear example, similar labor constraints exist across other low- and middle-wage sectors that rely on asylum-authorized workers.

Moreover, even DHS's very high wage-loss estimates significantly understate the rule's economic impact because they fail to account for broader output and productivity effects. Empirical estimates indicate that the 2021 to 2023 asylum surge was associated with approximately $200 billion in additional annual GDP, reflecting not only labor income but also increased productivity and returns to capital in affected communities.[7] DHS's analysis, which largely treats foregone asylum labor as a transfer to other workers, fails to account for these broader output effects and therefore understates the true economic cost of the proposed rule.

In addition to serious hardship to individual asylum applicants, these lost wages translate into broader economic harm. Wages earned by asylum seekers circulate through local economies, supporting small businesses, housing markets, and tax bases. Federal analyses consistently show that refugees and asylees, once permitted to work, contribute more in taxes over time

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[4] U.S. Bureau of Lab. Stat., *Job Openings and Labor Turnover Survey – January 2026 Results* tbl. A (U.S. Dep't of Labor Mar. 13, 2026), https://www.bls.gov/news.release/jolts_03132026.htm; U.S. Chamber of Commerce, *Understanding America's Labor Shortage: The Most Impacted Industries* (Nov. 21, 2023), https://www.uschamber.com/workforce/understanding-americas-labor-shortage-the-most-impacted-industries.

[5] Clemens et al., *Economic Evidence on Asylum EAD Reform*, *supra*, at 12-13.

[6] Proposed rule, 91 Fed. Reg. at 8,665.

[7] Clemens et al., *Economic Evidence on Asylum EAD Reform*, *supra*, at 3, 7, 29.

than they receive in public benefits.[8] This impact is not marginal. An estimated 2.3 million asylum applicants currently authorized to work in the United States contribute more than $108 billion to the U.S. economy each year and pay approximately $33 billion in combined federal, state, and local taxes, making them the largest group of work-authorized- immigrants in the country.[9] Disrupting access to employment authorization for this population therefore carries substantial and predictable consequences for employers, public revenues, and economic output.

The Proposed Rule Would Create Prolonged Adjudicatory Delays and Workforce Uncertainty

Beyond reducing the available workforce, the proposed rule would introduce sustained adjudicatory delays and uncertainty that directly disrupt employers' ability to plan, retain, and deploy workers over time.

The proposed changes would significantly lengthen and destabilize the employment authorization adjudication process by replacing clear, time-bound standards with discretionary and evaluative determinations. Employers rely on predictable authorization timelines to make staffing decisions, manage projects, and retain trained employees. Under the rule, extended processing periods, rolling pauses in adjudication, and heightened evidentiary review would make it increasingly difficult to anticipate when—or whether—employment authorization will be granted or renewed. This uncertainty would result in prolonged gaps in employment for individuals who are otherwise lawfully present and work-eligible, forcing employers to absorb sudden disruptions, delay onboarding, or lose experienced workers through no fault of their own.

These delays are likely to be exacerbated by the rule's apparent shift toward requiring adjudicators to engage in substantive assessments related to asylum eligibility at the EAD stage. Employment authorization has historically operated as an interim, ancillary determination tied to procedural milestones, not as an early merits screening of the underlying asylum claim. Introducing asylum eligibility judgments into EAD adjudications increases complexity, discretion, and processing time, particularly in an already backlogged system. The result is a cascading effect: longer adjudications lead to more frequent lapses in authorization, which in turn amplify workforce instability and economic disruption. Employers bear the operational consequences of these delays, including interrupted projects, lost investments in training, and avoidable turnover.

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[8] U.S. Dep't of Health & Hum. Servs., Off. of the Assistant Sec'y for Plan. & Evaluation, *The Fiscal Impact of Refugees and Asylees at the Federal, State, and Local Levels from 2005 to 2014* (Sept. 4, 2024), https://aspe.hhs.gov/sites/default/files/documents/28fe4e756499bdab08b4e6cb3b952e22/aspe-report-refugee-fiscal-impact.pdf; *see also* U.S. Immigration Research Initiative, *Economic Projections for Asylum Seekers and New Immigrants: U.S. and State-Level Data* 2–3 (Feb. 2024), https://immresearch.org/wp-content/uploads/Final-First-Jobs-and-Wage-Gain-US-and-state-level-data92.pdf (documenting wage growth and increasing state and local tax contributions among newly arriving immigrant workers after entering the labor force).

[9] U.S. Work Permits Data, *The Asylum Workforce and the U.S. Economy*, https://data.workpermits.us/asylum-workforce-report/ (last visited Apr. 6, 2026).

The Proposed Rule Increases the Risk of Inadvertent Noncompliance and Undermines the Statutory Framework

Employers depend on predictable, administrable employment authorization systems to comply with the Immigration Reform and Control Act of 1986 (IRCA), which requires verification of employment authorization through the Form I-9 process. IRCA was structured to ensure that employers could comply with the law by relying on federally issued documentation, without having to interpret immigration policy, assess eligibility standards, or respond to shifting agency operational constraints.[10] The statute's effectiveness depends on employers being able to understand, in advance, what documentation is valid and when it may be presented.

Congress has long distinguished between eligibility to work and proof of eligibility for the underlying immigration benefit to which that work authorization may be tied. IRCA paired employer sanctions with an obligation on the federal government to provide reliable documentation so employers could comply without becoming immigration adjudicators.

The asylum statute reflects the same structure. While 8 U.S.C. § 1158(d)(2) authorizes DHS to regulate the timing of employment authorization, Congress expressly limited that authority by prohibiting employment authorization only during the first 180 days after an asylum application is filed. That statutory limitation reflects Congress' expectation that, once the initial waiting period has passed, asylum applicants would be permitted to seek employment authorization and the agency regulation would govern the manner and timing of that process, not operate as a categorical or indefinite bar to participation in the labor market.[11] By conditioning access to employment authorization on agency-wide processing metrics that DHS itself concedes may take decades or more to resolve, the proposed rule exceeds the bounds of the regulatory authority Congress granted under 8 U.S.C. § 1158(d)(2).

The proposed rule suggests that delaying or denying EADs advances fraud prevention or national security. However, asylum applicants are already subject to extensive screening at the time of filing, biometrics collection, background checks, continuous vetting, and adjudication of the underlying asylum claim. DHS has not identified any additional screening that occurs uniquely at the EAD stage. Delaying work authorization or pausing acceptance of EAD applications altogether would drastically limit asylum applicants' interactions with DHS and, given current processing timelines, could leave some cases untouched for decades.[12] In practice, restricting access to EAD applications would result in fewer security and vetting

[10] Employment of Aliens; Verification and Employer Sanctions, 52 Fed. Reg. 16,216, 16,217 (May 1, 1987) (describing the employer sanctions regime as a document-based verification system, explaining that employers satisfy their obligations by examining specified documents, and stating that employment authorization documents are issued as evidence of authorization conferred by statute or regulation).

[11] Although asylum applicants are not entitled to employment authorization by operation of law, the statute expressly contemplates that they are permitted to apply for such authorization after the 180-day waiting period, subject to reasonable regulation. *See* 8 U.S.C. § 1158(d)(2).

[12] Recently, when DHS eliminated automatic EAD extensions, it explained that doing so was necessary to ensure more frequent vetting of applicants. *See* Removal of the Automatic Extension of Employment Authorization Documents, 90 Fed. Reg. 48,799, 48,801 (Oct. 30, 2025). This proposed rule moves in the opposite direction, by allowing asylum applicants to sit in limbo for years or decades with no regular procedural touchpoint at all.

touchpoints, weakening rather than enhancing DHS's ability to conduct ongoing background checks.

By making employment authorization adjudication unpredictable and subject to repeated pauses, the proposed rule would inject instability into employer compliance. Employers would face increased turnover, interrupted projects, and heightened risk of inadvertent noncompliance when long term employees suddenly lose or cannot renew documentation through no fault of their own. For employers, this instability translates into inability to know how to comply, workforce disruption, and administrative cost, burdens IRCA was designed to avoid.

USCIS's Fee-Funded Structure Mandates Timely Adjudication, Not Barring Access to Benefits

USCIS's approach in this proposed rule is particularly problematic given the agency's status as an almost entirely fee-funded adjudicatory body. Approximately 96 percent of USCIS's operating budget is derived from application and petition fees, not annual congressional appropriations.[13] That fee-for-service model is codified in section 286(m) of the Immigration and Nationality Act, which requires USCIS to prescribe and collect fees "to ensure recovery of the full costs of providing [adjudication and naturalization] services," reflecting Congress's expectation that fee payments correspond to the adjudication of benefit requests. DHS has repeatedly justified fee increases on the grounds that additional revenue is necessary to support the timely adjudication of immigration benefits and to prevent the accumulation of future backlogs. Indeed, in promulgating its most recent fee rule, DHS emphasized that updated fees were required so the agency could "recover its operating costs" and "support timely processing of new applications."[14] USCIS's fee-funded structure thus reflects a core premise of the immigration system: applicants and petitioners pay fees in exchange for the government's obligation to adjudicate benefit requests within a reasonable period of time.

That premise is further underscored by DHS's creation of a new Asylum Program Fee in 2024. Under that rule, DHS imposed a $600 surcharge on most employment-based petitions, expressly to fund asylum processing and improve adjudicative efficiency.[15] DHS estimated that the fee would generate approximately $313 million annually to support asylum operations.[16] After represented to the public that this large-scale additional fee revenue was necessary to resource asylum adjudications, DHS would now rely on prolonged processing times as a justification for suspending access to employment authorization. The proposed rule does precisely that: it converts agency backlogs, that DHS has acknowledged and sought to address through fee increases, into a regulatory basis for denying or indefinitely delaying access to a statutorily contemplated benefit.

[13] U.S. Citizenship & Immigr. Servs., Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 89 Fed. Reg. 6,386 (Jan. 31, 2024).
[14] *Id*. at 6,390–92 (describing USCIS's fee-funded model and the need to recover full adjudicative costs to support timely processing).
[15] *Id*. at 6,478–80 (establishing the Asylum Program Fee).
[16] *Id*. (estimating approximately $313 million in annual revenue to support asylum adjudications).

The proposed "pause" mechanism is also unprecedented in DHS rulemaking. Historically, DHS has responded to adjudicatory backlogs by reallocating resources, adjusting internal processing priorities, or modifying adjudication timelines. This history has been based on the clear understanding that Congress has called upon the agency to set fees at a level appropriate to fund the administration of the statutory system, and that the agency must accordingly accept and adjudicate the applications that Congress has allowed. This proposal, by contrast, conditions the ability to file an employment authorization application on agency-wide average processing times for asylum claims, effectively transforming USCIS's own delays into a trigger that bars otherwise eligible applicants from even seeking employment authorization. DHS itself acknowledges that, under current conditions, it could take between 14 and 173 years to reach the processing benchmark required to lift the pause.[17] This approach represents a fundamental departure from the statutory and administrative framework governing employment authorization and reflects the first time DHS has proposed using an internal processing metric as a mechanism to deny access to an opportunity to apply for an immigration benefit altogether. In practice, this mechanism would operate as a near-permanent bar, untethered from applicant conduct, employer need, or statutory design.

The Proposed Rule's Economic Analysis is Fundamentally Flawed

The economic analysis in the proposed rule does not meet the standards required for an economically significant rule. Executive Order 12866 requires agencies to provide a reasoned assessment of costs, benefits, alternatives, and feasibility. DHS's analysis falls short on each measure.[18] These deficiencies are particularly consequential given economic research that directly contradicts DHS's modeling assumptions.

Most notably, DHS's own projections undermine the rule's core premise. In explaining the proposed "pause" on initial EAD applications, DHS estimates that reducing average affirmative asylum processing times to 180 days could take between 14 and 173 years under current conditions.[19] This extraordinary range effectively concedes that the pause mechanism would operate as a near-permanent bar on employment authorization for future asylum applicants, rather than a temporary backlog-management tool.

An economic analysis that predicts century-scale timelines cannot plausibly support near-term regulatory intervention. Rather than reassessing its approach, DHS uses this implausible projection to justify imposing immediate and severe labor market restrictions, without evaluating alternative solutions that would reduce backlogs while preserving workforce participation.

DHS's assumption that employers can readily replace a substantial share of asylum-authorized workers is not supported by economic research. As noted above, empirical evidence shows that local labor markets receiving larger asylum inflows experienced higher employment, higher

[17] Proposed Rule at 91 Fed. Reg. 8,618, 8,650.
[18] Exec. Order No. 12,866, 58 FR 51,735 (Oct. 4, 1993).
[19] Proposed Rule at 91 Fed. Reg. 8,618, 8,650.

wages, and higher GDP, outcomes inconsistent with costless labor replacement.[20] This evidence calls into question DHS's decision to treat foregone asylum labor primarily as a transfer rather than as a real productivity and output loss.

By delaying employment authorization well beyond the statutory minimum and making access discretionary and intermittent, the proposed rule runs counter to this evidence and imposes economic costs that DHS itself acknowledges but does not justify.

DHS Failed to Properly Evaluate Reasonable Operational Alternatives

The proposed rule does not meaningfully evaluate reasonable operational alternatives, as required by Executive Order 12866 and the Administrative Procedure Act. Rather than extending the waiting period to 365 days and suspending acceptance of employment authorization applications based on average asylum processing times, DHS could have analyzed workload-management tools within its control, including reallocating adjudicators to asylum EAD processing during backlog surges, enforcing transparent first-in-first-out (FIFO) or last-in-first-out (LIFO) queue management, or batch processing. These alternatives would directly address backlogs by increasing throughput and predictability rather than shifting the consequences of agency delay onto applicants and employers. The proposed rule does not explain why these less disruptive options, or others, were not considered, nor does it compare their costs, benefits, or feasibility, rendering the analysis incomplete under settled administrative law principles.

Conclusion

For these reasons, DHS should withdraw the proposed rule and instead pursue operational and resource-based solutions that reduce backlogs while preserving lawful workforce participation. The economic, statutory, and administrative flaws identified above warrant reconsideration before imposing restrictions that would impose wide and lasting harm on employers, labor markets, and the broader economy.

Respectfully,

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[20] Clemens et al., *Economic Evidence on Asylum EAD Reform*, *supra*, at 3, 9-11.