

**DEPARTMENT OF HOMELAND SECURITY****8 CFR Part 274a**

[CIS No. 2785–24; DHS Docket No. USCIS–2024–0002]

RIN 1615–AC78

**Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants**

**AGENCY:** U.S. Citizenship and Immigration Services (“USCIS”), Department of Homeland Security (“DHS”).

**ACTION:** Final rule.

**SUMMARY:** This final rule amends DHS regulations to permanently increase the automatic extension period for expiring employment authorization and/or Employment Authorization Documents (Forms I–766 or EADs) for certain renewal applicants who have timely filed Form I–765, Application for Employment Authorization, from up to 180 days to up to 540 days. After two temporary rules, DHS is finalizing the recent temporary rule and making the increase permanent to help prevent eligible renewal EAD applicants from experiencing a lapse in employment authorization and/or the validity of their EAD as a result of lengthy USCIS processing times.

**DATES:** This final rule is effective January 13, 2025.

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**I. Executive Summary***A. Purpose of the Regulatory Action*

This final rule amends 8 CFR 274a.13(d) and the related employment eligibility verification provision at 8 CFR 274a.2(b)(1)(vii) to permanently

increase the automatic extension period for employment authorization and the validity of certain EADs from up to 180 days to up to 540 days. This automatic extension period is available to certain applicants who timely filed a Form I-765, Application for Employment Authorization, to renew their EADs.

Since the promulgation of 8 CFR 274a.13(d) with its 180-day automatic extension period in 2016,<sup>1</sup> DHS has issued two temporary final rules (TFRs) temporarily increasing the automatic extension period to up to 540 days in order to prevent a substantial number of renewal EAD applicants from experiencing a lapse in their employment authorization and/or documentation.<sup>2</sup> With the 2024 TFR that is currently in effect, DHS focused on near-term needs of renewal applicants, their families, and employers by substantially reducing the number of applicants who would experience harmful effects created by gaps in their employment authorization and/or documentation.<sup>3</sup> The 2024 TFR also provided DHS and USCIS with additional time to consider long-term solutions by soliciting public comments, evaluating the effects of policy and operational changes, and continuing to identify new ways to reduce renewal EAD application processing times.<sup>4</sup>

After careful consideration of the public comments submitted in connection with the 2024 TFR, as well as the operational realities associated with the events described in the 2024 TFR, DHS has determined that the up to 180-day automatic extension under 8 CFR 274a.13(d) does not provide USCIS enough time to address large spikes in EAD filings and other circumstances that may occur in the future and increase renewal EAD application processing times. DHS believes that a substantial number of renewal EAD applicants may, in the future, continue to face uncertainty about the risk of losing employment authorization and/or EAD validity through no fault of their own because of USCIS processing delays resulting from sporadic spikes in EAD filings or other unanticipated circumstances. The potential for gaps in employment authorization and EAD validity periods also creates uncertainty among U.S. employers.

In addition, lapses in employment authorization and EAD validity can

result in substantial harm to noncitizens, their families, their employers, and the public at large. To help prevent the harmful effects of these gaps, DHS is amending its existing regulations to permanently increase the automatic extension period applicable to expiring employment authorization and/or EADs for certain renewal applicants from up to 180 days to up to 540 days from the expiration date stated on their EADs. This final rule will be effective January 13, 2025. USCIS will also continue its efforts to reduce processing times for renewal EAD applications.

### B. Summary of Legal Authority

The authority for the Secretary of Homeland Security (Secretary) to issue this final rule is found in section 274a(h)(3)(B) of the INA, 8 U.S.C. 1324a(h)(3)(B), which recognizes the Secretary's authority to extend employment authorization to noncitizens in the United States. Under section 103(a) of the INA, 8 U.S.C. 1103(a), the Secretary is authorized to administer the immigration and nationality laws and establish such regulations as the Secretary deems necessary for carrying out such authority. Section 101(b)(1)(F) of the Homeland Security Act (HSA), 6 U.S.C. 111(b)(1)(F), establishes as a primary mission of DHS the duty to "ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland."

### C. Summary of Regulatory Changes

Following careful consideration of the public comments received in response to the 2024 TFR, DHS is making the following changes to its employment authorization and verification regulations:

- Amending existing 8 CFR 274a.2(b)(1)(vii): DHS is deleting the language "for up to 180 days," so that the paragraph describes the automatic extension period simply by referring to 8 CFR 274a.13(d) only. DHS is not changing the current reverification requirements an employer must follow for Form I-9, Employment Eligibility Verification,<sup>5</sup> at 8 CFR 274a.2(b)(1)(vii) that apply to automatic extensions. Additionally, to simplify the regulatory text, DHS is making an editorial change by eliminating the section symbol before the citation to section 274a.13(d) and

replacing it with the complete CFR citation, *i.e.*, 8 CFR 274a.13(d).

- Amending existing 8 CFR 274a.13(d)(1): DHS is amending the provision by combining the content previously contained in 8 CFR 274a.13(d)(1), (d)(5) and (d)(6). The amended paragraph provides that the automatic extension period under 8 CFR 274a.13(d)(1) (in effect prior to the effective date of this final rule) for applicants who had their renewal EAD applications filed and adjudicated prior to May 4, 2022, was 180 days. The amended provision also provides that the automatic extension period for renewal EAD applications pending on, or filed on or after May 4, 2022, is up to 540-days. Furthermore, DHS is clarifying that the up to 540-day EAD automatic extension period starts the day after the expiration date found on the face of the EAD.

- 8 CFR 274a.13(d)(1)(i): DHS is amending paragraph (d)(1)(i) to clarify that a renewal EAD application for Temporary Protected Status (TPS)-related EADs is timely filed under 8 CFR 274a.13(d)(1) when it is filed during the *re-registration* filing period in the applicable **Federal Register** notice. (Previously, the regulations contained a reference to the filing period; DHS is adding the term "re-registration for clarity.")

- Amending existing 8 CFR 274a.13(d)(3): DHS is eliminating the reference to the up to 180-day automatic extension period and replacing it with the up to 540-day period.

- Removing 8 CFR 274a.13(d)(5) and (d)(6): DHS is removing the provisions that were added as part of the 2022 TFR and the 2024 TFR. DHS has incorporated applicable content as part of the amendments made to 8 CFR 274a.13(d)(1).

- Revising the authority citations to 8 CFR part 274a: DHS is revising the authority citation to 8 CFR part 274a by adding 8 U.S.C. 1105a, which was inadvertently removed by another DHS rule. DHS is furthermore amending the authority by adding reference to INA 208, 214, and 244, 8 U.S.C. 1158, 1184, and 1254a, that serve as sources of statutory authority for employment authorization.

### D. Severability

In issuing this final rule, it is DHS's intention that the rule's various provisions be considered severable from one another to the greatest extent possible. For example, if a court of competent jurisdiction were to hold that the automatic extension may not be applied to a particular category of renewal EAD applicants or in a

<sup>1</sup> See 81 FR 82398 (Nov. 18, 2016) (AC21 Final Rule). The final rule was issued after a proposed rule was published in the **Federal Register**. See 80 FR 81899 (Dec. 31, 2015) (AC21 NPRM).

<sup>2</sup> See 87 FR 26614 (May 4, 2022) (2022 TFR); 89 FR 24628 (Apr. 8, 2024) (2024 TFR).

<sup>3</sup> 89 FR 24628, 24629 (Apr. 8, 2024).

<sup>4</sup> See 89 FR 24628, 24629 (Apr. 8, 2024).

<sup>5</sup> Employers must verify the identity and employment authorization of their new hires by examining documentation that evidences such employment eligibility and completing Form I-9. See INA sec.274a(b)(1)(A), 8 U.S.C. 1324a(b)(1)(A).

particular circumstance, DHS would intend for the court to leave the remainder of the rule in place with respect to all other covered persons and circumstances. DHS's overarching goal is to reduce the likelihood of lapses in employment authorization and/or EAD validity that would result in substantial and unnecessary harm to noncitizens who timely applied for a renewal EAD in certain categories, their families, their employers, and the public at large. This final rule will provide greater financial stability for eligible renewal EAD applicants and maintain continuity of business operations for their employers.

#### *E. Summary of Costs and Benefits*

This final rule—which finalizes the 2024 TFR and permanently increases the automatic extension period for employment authorization and the validity of certain EADs from up to 180 days to up to 540 days—will provide long-term predictability and reduced anxiety around job stability for EAD renewal applicants. When unforeseen future circumstances cause processing times to extend beyond 180 days and result in large scale lapses in renewal EADs, this permanent adjustment of the automatic extension period to 540 days will result in benefits and cost savings, such as stabilized earnings and avoided labor turnover costs.

USCIS examined the benefits of the 2022 TFR and 2024 TFR and estimates that from FY 2023 to FY 2027 these rules result in average stabilization of earnings worth \$10.0 billion to employment-authorized noncitizens and average cost savings of \$3.5 billion to U.S. employers from avoided labor turnover and are expected to yield an average \$1.1 billion in employment tax transfer payments using a 2 percent discount rate (see Table 17 for more information). While the EAD end dates are known to USCIS and can be used to accurately project at what date an EAD might lapse if not adjudicated, there is uncertainty around the monetized, economic impacts due to possible changes in the timing of EAD renewal filing behavior, adjudication resources and completion rates, and the duration of lapses experienced by workers of varying wages in the absence of any changes to the automatic extension period. The Regulatory Impact Analysis discusses the low and high-end estimates that bound the expected impacts described above.

## **II. Background**

Since the promulgation of 8 CFR 274a.13(d) in 2016,<sup>6</sup> authorizing the up

to 180-day automatic extension period for certain renewal EAD applicants, USCIS' ability to process both initial and renewal EAD applications within USCIS' targeted processing times has been adversely impacted by a variety of unforeseen events and circumstances.<sup>7</sup> As a result, DHS has found it necessary to take actions to reduce the likelihood that applicants for renewal EADs who are eligible for an automatic extension of their EAD validity under 8 CFR 274a.13(d) experience lapses in their employment authorization and/or proof of employment authorization because of USCIS processing delays and through no fault of their own.<sup>8</sup> DHS has found that such lapses in employment authorization and/or EAD validity could result in substantial and unnecessary harm to noncitizens who timely filed for extensions of employment authorization, their families, their employers, and the public at large.<sup>9</sup>

In 2021, a surge in EAD applications, coupled with operational challenges exacerbated by the COVID-19 pandemic, resulted in a significant increase in renewal EAD application processing times.<sup>10</sup> The processing times increased to such a level that the 180-day automatic extension for certain pending renewal EAD applications under 8 CFR 274a.13(d) was insufficient to prevent many renewal applicants from experiencing a lapse in employment authorization and/or documentation while their renewal applications remained pending with USCIS.<sup>11</sup>

In May 2022, DHS published a temporary final rule ("2022 TFR") that, for certain renewal EAD applications filed during a 540-day period that ended on October 26, 2023, increased the automatic extension period from up to

<sup>7</sup> See 87 FR 26614, 26617–26 (May 4, 2022) (identifying USCIS' precarious fiscal status, the COVID-19 public health emergency, and dramatic increases in Form I-765 filings as some of the unforeseen events and circumstances); 89 FR 24628, 24634–40 (Apr. 8, 2024) (identifying, in addition to many of the same events and circumstances as the 2022 TFR, an increase in referrals to USCIS for Credible Fear Assessment and an increase in affirmative and defensive asylum filings as contributing factors to an increase in average processing time).

<sup>8</sup> See 87 FR 26614 (May 4, 2022); 89 FR 24628 (Apr. 8, 2024).

<sup>9</sup> These findings were made as part of the 2022 and 2024 TFRs. See 87 FR 26614, 26636 (May 4, 2022), 89 FR 24628, 24655 (Apr. 8, 2024), for findings related to potential economic impacts caused by lapsed employment authorization and/or documentation.

<sup>10</sup> See 87 FR 26614, 26618 (May 4, 2022) (explaining that the COVID-19 pandemic exacerbated USCIS' precarious financial situation, while a sudden and dramatic increase in Form I-765 filings further hampered USCIS' efforts to return to a steady pace in adjudications).

<sup>11</sup> See 87 FR 26614, 26640 (May 4, 2022).

180 days to up to 540 days.<sup>12</sup> This measure helped minimize gaps in employment authorization and/or EAD validity for eligible renewal EAD applicants, while giving USCIS the opportunity to address its backlogs through operational and sub-regulatory measures and work toward its goal of returning to regular 3-month processing times.

The 2022 TFR proved to be very successful at minimizing disruption to renewal EAD applicants and their U.S. employers that would have otherwise resulted from USCIS processing delays.<sup>13</sup> Not only did the 2022 TFR immediately restore employment authorization and/or EAD validity for approximately 70,000 renewal EAD applicants who were already beyond the up to 180-day automatic extension period when the 2022 TFR published, but the 2022 TFR also helped nearly 280,000 renewal EAD applicants avoid a gap in employment authorization and/or employment authorization documentation based on renewal EAD applications filed from May 4, 2022 through October 26, 2023.<sup>14</sup>

However, for reasons fundamentally unrelated to the reasons stated in the 2022 TFR, the renewal EAD processing backlog grew despite USCIS' best efforts. In the middle of FY 2023, EAD application filings began to increase substantially. The historic 1 million application increase in initial and renewal EAD filings, compounded by the lack of a filing fee increase, the adjudicative demands of USCIS' responses to global humanitarian crises, and other increases in immigration benefit filings and court-ordered processing timeframes, created an insurmountable operational strain and increase in renewal EAD application processing times.<sup>15</sup> The processing times were at such a level that the 180-day automatic extension period for certain renewal EAD applications remained insufficient to prevent a large

<sup>12</sup> See 87 FR 26614 (May 4, 2022).

<sup>13</sup> See 89 FR 24628, 24634 (Apr. 8, 2024).

<sup>14</sup> *Id.*

<sup>15</sup> The continued lengthy processing times was primarily due to a substantial increase in the number of initial EAD applications based on pending asylum applications (C08) that began in March 2023 and litigation regarding rules governing EAD applications that require USCIS to process initial EAD applications for asylum applicants within 30 days of filing. Other causes included a surge in initial EAD applications filed by individuals with pending asylum applications, the allocation of USCIS personnel to assist with historically high levels of encounters at the southwest land border between the ports of entry, and additional TPS designations in FY 2022 and FY 2023.

<sup>6</sup> See 81 FR 82398 (Nov. 18, 2016).

number of lapses projected to start in May 2024.

Accordingly, DHS again took steps to help prevent certain renewal EAD applicants from experiencing a lapse in their employment authorization and/or documentation while their renewal applications remain pending while continuing to implement other solutions to return processing times to target levels. In April 2024, DHS published a temporary final rule (“2024 TFR”) that, for certain renewal EAD applications filed from October 27, 2023, through September 30, 2025, again temporarily increased the automatic extension period from up to 180 days to up to 540 days.<sup>16</sup>

USCIS projected that without the 2024 TFR, approximately 800,000 renewal applicants would have been in danger of losing their employment authorization and/or documentation in the period beginning May 2024 and ending March 2026.<sup>17</sup> If faced with a disruption of their employment authorization and/or documentation, these renewal applicants may have lost their jobs through no fault of their own, and their employers would have been faced with finding replacement workers, an undue burden that would have been exacerbated during a time when the U.S. economy has been experiencing more job openings than available workers.<sup>18</sup>

With the 2024 TFR, DHS focused on near-term needs of applicants, their families, and employers by ensuring that, through the 2024 TFR, a substantially smaller number of applicants would experience near-term harmful effects that gaps in employment authorization and/or documentation could create. The 2024 TFR averted many of these imminent adverse consequences and provided DHS and USCIS with an additional window to consider long-term solutions by soliciting public comments, evaluating the effects of policy and operational changes, and continuing to identify new strategies and efficiencies in light of ongoing developments.<sup>19</sup>

After carefully considering public comments, as well as the operational realities associated with the changes described in the 2024 TFR, DHS has determined that the automatic extension

period should be permanently increased from up to 180 days to up to 540 days. This final rule will be effective January 13, 2025.

Permanently increasing the automatic extension period will help avoid the gaps in employment authorization and/or documentation that could otherwise affect eligible renewal EAD applicants, their families, and their U.S. employers in those cases where USCIS is unable to process their renewal applications within the 180-day automatic extension period provided under the current regulation because of circumstances that are beyond the control of the applicant.

#### A. Legal Authority

The Secretary of Homeland Security’s (Secretary) authority for the regulatory amendments made in this final rule are found in various sections of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. 1101 *et seq.*, and the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135 (codified in part at 6 U.S.C. 101 *et seq.*). General authority for issuing this rule is found in section 103(a) of the INA, 8 U.S.C. 1103(a), which authorizes the Secretary to administer and enforce the immigration and nationality laws and establish such regulations as the Secretary deems necessary for carrying out such authority, as well as section 102 of the HSA, 6 U.S.C. 112, which vests all of the functions of DHS in the Secretary and authorizes the Secretary to issue regulations.<sup>20</sup> Further authority for this rule is found in:

- Section 208(d)(2) of the INA, 8 U.S.C. 1158(d)(2), which authorizes the Secretary to grant employment authorization to applicants for asylum if 180 days have passed since filing an application for asylum;
- Section 214 of the INA, 8 U.S.C. 1184, including section 214(a)(1) of the INA, 8 U.S.C. 1184(a)(1), which authorizes the Secretary to prescribe, by regulation, the time and conditions of the admission of nonimmigrants;
- Section 244(a)(1)(B) of the INA, 8 U.S.C. 1254a(a)(1)(B), which states that the Secretary shall authorize employment and provide evidence of employment authorization for noncitizens who have been granted Temporary Protected Status;
- Section 274A(b) of the INA, 8 U.S.C. 1324a(b), which provides for the

employment verification system and outlines employment eligibility verification requirements.

- Section 274A(h)(3)(B) of the INA, 8 U.S.C. 1324a(h)(3)(B), which recognizes the Secretary’s authority to extend employment authorization to noncitizens in the United States;<sup>21</sup> and
- Section 101(b)(1)(F) of the Homeland Security Act, 6 U.S.C. 111(b)(1)(F), which establishes as a primary mission of DHS the duty to “ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland.”

#### B. Legal Framework for Employment Authorization and Verification

##### 1. Types of Employment Authorization: 8 CFR 274a.12(a), (b), and (c)

Whether a noncitizen is authorized to work in the United States depends on the noncitizen’s immigration status or other conditions that may permit employment authorization (for example, having a pending application for asylum or a grant of deferred action). DHS regulations outline three classes of noncitizens who may be eligible for employment in the United States, as follows:<sup>22</sup>

- Noncitizens in the first class, described at 8 CFR 274a.12(a), are authorized to work “incident to status” for any employer, as well as to engage

<sup>21</sup> Courts have acknowledged that Congress delegated authority to DHS to grant or extend employment authorization to certain classes of noncitizens. *See, e.g., Washington Alliance of Technology Workers v. DHS*, 50 F.4th 164, 191–192 (D.C. Cir. 2022) (“What matters is that section 1324a(h)(3) expressly acknowledges that employment authorization need not be specifically conferred by statute; it can also be granted by regulation.”). DHS is exercising this discretionary authority consistent with all applicable authorities, including the referenced authorities in the HSA, and sections 103, 208, 214, 244 and 274A(h)(3) of the INA, 8 U.S.C. 1103, 1158, 1184, 1254a and 1324a(h)(3), as well as the Administrative Procedure Act at 5 U.S.C. 553. *See Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2263 (2024) (“In a case involving an agency, of course, the statute’s meaning may well be that the agency is authorized to exercise a degree of discretion. Congress has often enacted such statutes. For example, some statutes ‘expressly delegate’ to an agency the authority to give meaning to a particular statutory term. Others empower an agency to prescribe rules to ‘fill up the details’ of a statutory scheme, or to regulate subject to the limits imposed by a term or phrase that ‘leaves agencies with flexibility,’ such as ‘appropriate’ or ‘reasonable.’”) (internal citations omitted).

<sup>22</sup> There are several employment-eligible categories that are not included in DHS regulations, but instead are described in the form instructions to Form I–765, Application for Employment Authorization (EAD application). Employment-authorized L nonimmigrant spouses are an example. *See* INA sec. 214(c)(2)(E), 8 U.S.C. 1184(c)(2)(E).

<sup>16</sup> *See* 89 FR 24628 (Apr. 8, 2024). The 2024 TFR increased the automatic extension period from up to 180 days to up to 540 days for applicants who properly filed their EAD renewals on or after October 27, 2023, and that remained pending on May 4, 2024, as well as renewal EAD applications filed from May 4, 2024, through September 30, 2025.

<sup>17</sup> *See* 89 FR 24628, 24660 (Table 7) (Apr. 8, 2024).

<sup>18</sup> *See* 89 FR 24628, 24630 (Apr. 8, 2024).

<sup>19</sup> *See* 89 FR 24628, 24629 (Apr. 8, 2024).

<sup>20</sup> Although several provisions of the INA discussed in this final rule refer exclusively to the “Attorney General,” such provisions are now to be read as referring to the Secretary of Homeland Security by operation of the HSA. *See* 6 U.S.C. 202(3), 251, 271(b), 542 note, 557; 8 U.S.C. 1103(a)(1) and (g), 1551 note; *Nielsen v. Preap*, 586 U.S. 392, 397 n.2 (2019).

in self-employment, as a condition of their immigration status or circumstances. This means that for certain eligible noncitizens, employment authorization is granted with the underlying immigration status (called “incident to status” employment authorization). Although authorized to work as a condition of their status or circumstances, certain classes of noncitizens must apply to USCIS in order to receive a Form I-766 EAD as evidence of that employment authorization.<sup>23</sup>

- Noncitizens in the second class, described at 8 CFR 274a.12(b), also are authorized to work “incident to status” as a condition of their immigration status or circumstances, but generally the authorization is valid only with a specific employer.<sup>24</sup> These noncitizens are issued an Arrival-Departure Record (Form I-94) indicating their employment-authorized status in the United States and in most cases do not file separate requests for evidence of employment authorization.

- Noncitizens in the third class, described at 8 CFR 274a.12(c), are required to apply for employment authorization and may work only if USCIS, in its discretion, approves their application. They are authorized to work for any employer or engage in self-employment upon approval of their EAD application, subject to certain restrictions, so long as their EAD remains valid.<sup>25</sup>

## 2. The Application Process for Obtaining Employment Authorization and EADs

For certain eligibility categories listed in 8 CFR 274a.12(a) (the first class) and all eligibility categories listed in 8 CFR 274a.12(c) (the third class), as well as additional categories specified in the Form I-765 instructions,<sup>26</sup> an EAD application must be properly filed with USCIS (with fee or fee waiver, as applicable) to receive employment authorization and/or an EAD.<sup>27</sup> EADs

issued under 8 CFR 274a.12(a) or (c) generally allow these noncitizens to work for any U.S. employer or engage in self-employment, subject to certain restrictions, as applicable. If an EAD application is approved under CFR 274a.12(a), the resultant EAD provides the noncitizen with proof of employment authorization incident to status or circumstance. Certain noncitizens may file EAD applications concurrently with related benefit requests if permitted by the applicable form instructions or as announced by USCIS.<sup>28</sup> In such instances, the underlying benefit requests, if granted, would form the basis for an EAD or eligibility to apply for employment authorization. For eligibility categories listed in 8 CFR 274a.12(a) and (c), USCIS has the discretion to establish a specific validity period for the EAD.<sup>29</sup>

### 3. Automatic Extensions of EADs for Renewal Applicants and Related Employment Eligibility Verification Requirements for Employers

#### i. Renewing Employment Authorization and/or EADs

Temporary employment authorization and EADs generally are not valid indefinitely but instead expire after a specified period of time.<sup>30</sup> Generally, noncitizens within the eligibility categories listed in 8 CFR 274a.12(c) must obtain a renewal of employment authorization and their EADs before the expiration date stated on their current EADs, or they will lose their eligibility to work in the United States (unless, since obtaining their current EADs, the noncitizens have obtained an immigration status or belong to a class of individuals with employment authorization incident to that status or class, or obtain employment authorization based on another category).<sup>31</sup> The same holds true for some classes of noncitizens authorized to work incident to status whose EAD expiration dates coincide with the termination or expiration of their

underlying immigration status. Other noncitizens authorized to work incident to status, such as asylees, refugees, and TPS beneficiaries, may have immigration status that confers employment authorization that continues past the expiration date stated on their EADs. Nevertheless, such noncitizens may wish to renew their EAD to have acceptable evidence of their continuous employment authorization for various purposes, such as presenting evidence of employment authorization and identity to their employers for completion of Form I-9, Employment Eligibility Verification. Failure to renew their EADs prior to the expiration date may result in job loss if such noncitizens do not have or cannot present alternate acceptable evidence of employment authorization to show their employers, as employers who continue to employ noncitizens without employment authorization may be subject to criminal penalties and/or civil monetary penalties.<sup>32</sup>

Those seeking to renew previously granted employment authorization or obtain new EADs must file renewal EAD applications with USCIS in accordance with the form instructions.<sup>33</sup>

#### ii. Minimizing the Risk of Gaps in Employment Authorization and/or EAD Validity Through Automatic Extensions

If an eligible noncitizen is not able to obtain renewal of their employment authorization and/or EAD before it expires, the noncitizen and the employer could experience adverse

<sup>32</sup> The employee must present the employer with acceptable documents evidencing identity and employment authorization. The lists of acceptable documents can be found on Form I-9. See DHS, USCIS, Form I-9, “Employment Eligibility Verification,” <https://www.uscis.gov/sites/default/files/document/forms/i-9.pdf> (last visited Oct. 23, 2024). An employer that does not properly complete Form I-9, which includes re verifying continued employment authorization, or continues to employ an individual with knowledge that the individual is not authorized to work, may be subject to civil money penalties. See DHS, USCIS, *M-274, Handbook for Employers, 11.8 Penalties for Prohibited Practices*, <https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/11-0-unlawful-discrimination-and-penalties-for-prohibited-practices/11-8-penalties-for-prohibited-practices> (last visited Feb. 7, 2024). In addition, an employer who engages in a “pattern or practice” of employing unauthorized individuals may face criminal penalties under 8 U.S.C. 1324a(f). U.S. Immigration and Customs Enforcement has primary enforcement responsibilities for enforcement of the civil monetary penalties under INA sec. 274a, 8 U.S.C. 1324a.

<sup>33</sup> See 8 CFR 103.2, 106.2, and 274a.13(a); see DHS, USCIS, *Form I-765, Instructions for Application for Employment Authorization*, <https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf> (last visited Oct. 23, 2024). In reviewing the EAD application, USCIS ensures that the fee was paid, a fee waiver was granted, or a fee exemption applies.

<sup>23</sup> See 8 CFR 274a.12(a).

<sup>24</sup> See 8 CFR 274a.12(b).

<sup>25</sup> See 8 CFR 274a.12(c); *Matter of Tong*, 16 I&N Dec. 593, 595 (BIA 1978) (holding that the term “employment” is a common one, generally used with relation to the most common pursuits,” and includes “the act of being employed for one’s self”).

<sup>26</sup> See DHS, USCIS, Form I-765, “Instructions for Application for Employment Authorization,” <https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf> (last visited Feb. 7, 2024). In reviewing the EAD application, USCIS ensures that the fee was paid, a fee waiver was granted, or a fee exemption applies.

<sup>27</sup> See 8 CFR 103.2(a) and 8 CFR 274a.13(a). Some applicants who are employment authorized incident to status (e.g., asylees, refugees, TPS beneficiaries) may file an EAD application to obtain an EAD. Applicants who are filing within an

eligibility category listed in 8 CFR 274a.12(c) must, by contrast, use the EAD application form to request both employment authorization and an EAD.

<sup>28</sup> See 8 CFR 274a.13(a). For example, the spouse of an H-1B worker may file an EAD application at the same time as their Form I-539, Application to Extend/Change Nonimmigrant Status. See DHS, USCIS, *Employment Authorization for Certain H-4, E Dependent Spouses* (last reviewed/updated Aug. 2, 2024), <https://www.uscis.gov/working-in-the-united-states/temporary-workers/h-4-specialty-occupations-and-fashion-models/employment-authorization-for-certain-h-4-dependent-spouses> (last visited Oct. 23, 2024).

<sup>29</sup> See 8 CFR 274.12(a) and (c).

<sup>30</sup> See 8 CFR 274a.13(b). But see 8 CFR 274a.14 (setting forth the bases for termination or revocation of employment authorization).

<sup>31</sup> See 8 CFR 274a.14(a)(1)(i).

consequences. For the noncitizen, the lack of renewal could cause job loss, gaps in employment authorization and/or documentation, and loss of income. For the noncitizen's employer, the disruption may cause instability with business continuity or other financial harm. In addition, under 8 CFR 274a.2(b)(1)(vii), if an employee's employment authorization and/or documentation expires, their employer must reverify or update the employee's Form I-9 to reflect that the employee is still authorized to work in the United States; otherwise, the employee can no longer work. No later than the date employment authorization expires, employees must present unexpired acceptable documentation that demonstrates continued authorization to work.<sup>34</sup> The employer is required to reverify or update information on the employee's Form I-9 to record the employee's evidence of continued employment authorization. Employers who fail to properly complete Forms I-9 including reverification are subject to civil money penalties for paperwork violations.<sup>35</sup> Employers must terminate employment of employees who have gaps in their employment authorization documentation and are not able to reverify or risk being fined under the employer sanctions provisions in section 274A of the INA, 8 U.S.C. 1324a.

Beyond the financial and economic impact that gaps in employment authorization or proof thereof creates for the noncitizen and the employer, if the noncitizen engages in unauthorized employment, such activity may render a noncitizen removable,<sup>36</sup> render a noncitizen ineligible for future benefits such as adjustment of status,<sup>37</sup> and/or subject the employer to civil and/or criminal penalties.<sup>38</sup>

Before 2016, DHS regulations stated that USCIS would "adjudicate an application [for an EAD] within 90 days" from the date USCIS received the application.<sup>39</sup> If USCIS did not adjudicate the application within that timeframe, the applicant was eligible for an interim document evidencing employment authorization with a validity period not to exceed 240 days.

<sup>34</sup> See DHS, USCIS, *M-274, Handbook for Employers, 6.1, Verifying Employment Authorization for Current Employees*, <https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/60-completing-supplement-b-reverification-and-rehire-of-form-i-9/61-reverifying-employment-authorization-for-current-employees> (last visited Aug. 2, 2024).

<sup>35</sup> See INA sec. 274A(e)(5), 8 U.S.C. 1324a(e)(5).

<sup>36</sup> See, e.g., INA sec. 237(a)(1)(C), 8 U.S.C. 1227(a)(1)(C); 8 CFR 214.1(e).

<sup>37</sup> See INA sec. 245(c), (k); 8 U.S.C. 1255(c), (k).

<sup>38</sup> See INA sec. 274A, 8 U.S.C. 1324a.

<sup>39</sup> See 8 CFR 274a.13(d) (2016).

On November 18, 2016, as part of DHS's efforts to implement the flexibilities provided to noncitizens and employers by the American Competitiveness in the Twenty-first Century Act of 2000 (AC21), as amended, and the American Competitiveness and Workforce Improvement Act of 1998, DHS published a final regulation<sup>40</sup> removing the provision and replacing it with the current 8 CFR 274a.13(d).

To prevent gaps in employment authorization and/or documentation and related consequences for certain renewal applicants,<sup>41</sup> and in light of processing times and possible filing surges,<sup>42</sup> DHS changed its regulations at 8 CFR 274a.13(d) such that under the current provision, and except as otherwise provided by law, certain categories of renewal applicants receive an automatic extension of their EADs (and, if applicable, related employment authorization) for up to 180 days from the expiration date on the EAD.<sup>43</sup> To receive the automatic extension, an eligible renewal applicant must meet the following conditions:

- The renewal applicant timely files an application to renew the employment authorization and/or EAD before the EAD expires;<sup>44</sup>
- The renewal EAD application is based on the same employment authorization category shown on the front of the expiring EAD or, for an individual approved for TPS, whose EAD was issued pursuant to either 8 CFR 274a.12(a)(12) or (c)(19);<sup>45</sup> and

<sup>40</sup> See 81 FR 82398 (Nov. 18, 2016) ("AC21 Final Rule"). The final rule was issued after a proposed rule was published in the *Federal Register*. See 80 FR 81899 (Dec. 31, 2015) ("AC21 NPRM").

<sup>41</sup> See 80 FR 81899, 81927 (Dec. 31, 2015) ("DHS proposes to amend its regulations to help prevent gaps in employment authorization for certain employment-authorized individuals who are seeking to renew expiring EADs. These provisions would significantly mitigate the risk of gaps in employment authorization and required documentation for eligible individuals, thereby benefitting them and their employers.").

<sup>42</sup> See 80 FR 81899, 81927 (Dec. 31, 2015) ("DHS believes that this time period [of up to 180 days] is reasonable and provides more than ample time for USCIS to complete the adjudication process based on USCIS' current 3-month average processing time for Applications for Employment Authorization."), 81927 n.77 ("Depending on any significant surges in filings, however, there may be periods in which USCIS takes longer than 2 weeks to issue Notices of Action (Forms I-797C).").

<sup>43</sup> 8 CFR 274a.13(d); see also 81 FR 82398, 82455-82463 (Nov. 18, 2016).

<sup>44</sup> 8 CFR 274a.13(d)(1)(i). TPS beneficiaries must file during the re-registration period in the applicable *Federal Register* notice; see 81 FR 82398, 82455 (Nov. 18, 2016).

<sup>45</sup> See 8 CFR 274a.13(d)(1)(ii) (exempting individuals approved for TPS with EADs issued pursuant to 8 CFR 274a.12(c)(19) from the requirement that the employment authorization category on the face of the expiring EAD be the same as on the renewal EAD application).

- The renewal applicant's eligibility to apply for employment authorization continues notwithstanding the expiration of the EAD and is based on an employment authorization category that does not require the adjudication of an underlying application or petition before the adjudication of the renewal application, as may be announced on the USCIS website.<sup>46</sup>

The following classes of noncitizens filing to renew an EAD may be eligible to receive an automatic extension of their employment authorization and/or EAD for up to 180 days:<sup>47</sup>

- Noncitizens admitted as refugees (A03);<sup>48</sup>
- Noncitizens granted asylum (A05);<sup>49</sup>
- Noncitizens admitted as parents or dependent children of noncitizens granted permanent residence under section 101(a)(27)(I) of the INA, 8 U.S.C. 1101(a)(27)(I) (A07);<sup>50</sup>
- Noncitizens admitted to the United States as citizens of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau pursuant to agreements between the United States and the former trust territories (A08);<sup>51</sup>
- Noncitizens granted withholding of deportation or removal (A10);<sup>52</sup>
- Noncitizens granted TPS, if the employment authorization category on their current EAD is either A12 or C19 (A12);<sup>53</sup>
- Noncitizen spouses of E-1/2/3 nonimmigrants (Treaty Trader/Investor/Australian Specialty Worker) (A17);<sup>54</sup>
- Noncitizen spouses of L-1 nonimmigrants (Intracompany Transferees) (A18);<sup>55</sup>
- Noncitizens who have filed applications for asylum and withholding of deportation or removal (C08);<sup>56</sup>
- Noncitizens who have filed applications for adjustment of status to lawful permanent resident under

<sup>46</sup> See 8 CFR 274a.13(d)(1)(iii).

<sup>47</sup> See DHS, USCIS, *Automatic Employment Authorization (EAD) Extension* (last reviewed/updated Oct. 9, 2024), <https://www.uscis.gov/working-in-the-united-states/information-for-employers-and-employees/automatic-employment-authorization-document-ead-extension> (last visited Oct. 23, 2024).

<sup>48</sup> See 8 CFR 274a.12(a)(3).

<sup>49</sup> See 8 CFR 274a.12(a)(5).

<sup>50</sup> See 8 CFR 274a.12(a)(7).

<sup>51</sup> See 8 CFR 274a.12(a)(8).

<sup>52</sup> See 8 CFR 274a.12(a)(10).

<sup>53</sup> See 8 CFR 274a.12(a)(12) or (c)(19).

<sup>54</sup> See INA sec. 214(e)(2), 8 U.S.C. 1184(e)(2).

<sup>55</sup> See INA sec. 214(c)(2)(E), 8 U.S.C. 1184(c)(2)(E).

<sup>56</sup> See 8 CFR 274a.12(c)(8).

section 245 of the INA, 8 U.S.C. 1255 (C09);<sup>57</sup>

- Noncitizens who have filed applications for suspension of deportation under section 244 of the INA (as it existed prior to April 1, 1997), cancellation of removal pursuant to section 240A of the INA, or special rule cancellation of removal under section 309(f)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (C10);<sup>58</sup>

- Noncitizens who have filed applications for creation of record of lawful admission for permanent residence (C16);<sup>59</sup>

- Noncitizens who have filed applications for TPS and who have been deemed *prima facie* eligible for TPS under 8 CFR 244.10(a) and have received an EAD as a “temporary treatment benefit” under 8 CFR 244.10(e) and 274a.12(c)(19) (C19);<sup>60</sup>

- Noncitizens who have filed legalization applications pursuant to section 210 of the INA, 8 U.S.C. 1160 (C20);<sup>61</sup>

- Noncitizens who have filed legalization applications pursuant to section 245A of the INA, 8 U.S.C. 1255a (C22);<sup>62</sup>

- Noncitizens who have filed applications for adjustment of status pursuant to section 1104 of the Legal Immigration Family Equity Act (C24);<sup>63</sup>

- Certain noncitizen spouses (H–4) of H–1B nonimmigrants with an unexpired Form I–94 showing H–4 nonimmigrant status (C26);<sup>64</sup> and

- Noncitizens who are the principal beneficiaries or derivative children of approved Violence Against Women Act (VAWA) self-petitioners,<sup>65</sup> under the

employment authorization category “(c)(31)” in the form instructions to the EAD application (C31).<sup>66</sup>

The extension automatically terminates the earlier of up to 180 days after the expiration date on the face of the EAD, or upon issuance of notification of a decision denying the renewal request.<sup>67</sup> An EAD that is expired on its face is considered unexpired when combined with a Form I–797C receipt notice indicating a timely filing of the application to renew the EAD when the automatic extension requirements are met.<sup>68</sup> Therefore, when the “card expires” date on the front of the EAD is reached, an eligible noncitizen who is continuing their U.S. employment may present to their employer the Form I–797C receipt notice for the renewal EAD application to show that the validity of their EAD has been automatically extended as evidence of continued employment authorization, and the employer must update the previously completed Form I–9, Employment Eligibility Verification, to reflect the extended EAD expiration date based on the automatic extension while the renewal is pending. For new employment, the automatic extension date is recorded on the Form I–9 by the employee and the employer in the first instance. In either case, reverification of employment authorization or the EAD must occur when the automatic extension period terminates.<sup>69</sup>

USCIS generally recommends the filing of a renewal EAD application up to 180 days before the current EAD expires.<sup>70</sup> If the renewal application is

petition for themselves (self-petition) without the abuser’s knowledge, consent, or participation in the process. The VAWA provisions allow victims to seek both safety and independence from their abusers.

<sup>66</sup> INA sec. 204(a)(1)(D)(i)(II), (IV), (a)(1)(K), 8 U.S.C. 1154(a)(1)(D)(i)(II), (IV), (a)(1)(K).

<sup>67</sup> See 8 CFR 274a.13(d)(3).

<sup>68</sup> See 8 CFR 274a.13(d)(4).

<sup>69</sup> See DHS, USCIS, “Completing Supplement B, Reverification and Rehires (formerly Section 3),” <https://www.uscis.gov/i-9-central/complete-correct-form-i-9/completing-supplement-b-reverification-and-rehires-formerly-section-3> (last visited Nov. 3, 2023); see also DHS, USCIS, *M–274 Handbook for Employers, 5.2 Temporary Increase of Automatic Extension of EADs from 180 Days to 540 Days* (last reviewed/updated Apr. 8, 2024), <https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/50-automatic-extensions-of-employment-authorization-and-or-employment-authorization-documents-eads-in/52-temporary-increase-of-automatic-extension-of-eads-from-180-days-to-540-days> (last visited Oct. 23, 2024).

<sup>70</sup> See DHS, USCIS, “I–765, Application for Employment Authorization,” <https://www.uscis.gov/i-765> (last visited Oct. 23, 2024); DHS, USCIS, *Employment Authorization Document* (last reviewed/updated June 7, 2024), <https://www.uscis.gov/green-card/green-card-processes->

granted, the employment authorization and/or the new EAD generally will be valid as of the date of approval of the application. If the application is denied, the automatically extended employment authorization and/or EAD generally is terminated on the day of the denial.<sup>71</sup> If the renewal application was timely and properly filed, but remains pending beyond the 180-day automatic extension period, the applicant must stop working upon the expiration of the automatically extended validity period and the employer must remove the employee from the payroll if the applicant/employee cannot provide other acceptable evidence of current employment authorization.<sup>72</sup> As a result, both the employee and the employer may experience the negative consequences of gaps in employment authorization and/or EAD validity.

Since its promulgation in 2016, the automatic extension provision at 8 CFR 274a.13(d) has helped to minimize the risk of these negative consequences for applicants who are otherwise eligible for the automatic extension and their employers.

### C. 2022 Temporary Final Rule

#### 1. Overview

In 2022, processing times for EAD applications had increased due to operational challenges that were exacerbated by the emergency measures USCIS employed to maintain its operations through the height of the COVID–19 pandemic in 2020, combined with a sudden increase in EAD application filings. The up to 180-day automatic extension period for renewal EAD applicants’ employment authorization and/or EADs was no longer sufficient to prevent lapses in employment authorization and/or documentation for these applicants.

To mitigate the impact of these operational challenges, on May 4, 2022, DHS published a TFR titled “Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants” (2022 TFR) in the **Federal Register**.<sup>73</sup> The rule temporarily amended DHS regulations at 8 CFR 274a.13(d) by adding a new paragraph 8 CFR 274a.13(d)(5), which lengthened the automatic extension period provided in that section from up to 180 days to up to 540 days for those

*and-procedures/employment-authorization-document* (last visited Oct. 23, 2024); see also 81 FR 82398, 82456.

<sup>71</sup> See 8 CFR 274a.13(d)(3).

<sup>72</sup> See 8 CFR 274a.2(b)(vii) (reverification provision).

<sup>73</sup> 87 FR 26614 (May 4, 2022).

<sup>57</sup> See 8 CFR 274a.12(c)(9). In certain adjustment of status cases, if the applicant seeks an EAD and advance parole (by filing Form I–131, Application for Travel Document), USCIS may issue an employment authorization card combined with an Advance Parole Card (Form I–512). This is also referred to as a “combo card.” If the EAD card is combined with the advance parole authorization (the EAD card has an annotation “SERVES AS I–512 ADVANCE PAROLE”), any automatic extension does not apply to the advance parole part of the combo card.

<sup>58</sup> See 8 CFR 274a.12(c)(10).

<sup>59</sup> See 8 CFR 274a.12(c)(16).

<sup>60</sup> See 8 CFR 274a.12(c)(19).

<sup>61</sup> See 8 CFR 274a.12(c)(20).

<sup>62</sup> See 8 CFR 274a.12(c)(22).

<sup>63</sup> See 8 CFR 274a.12(c)(24).

<sup>64</sup> See 8 CFR 274a.12(c)(26).

<sup>65</sup> Family-based immigration generally requires U.S. citizens and lawful permanent residents to file a petition on behalf of their noncitizen family members. Some petitioners may misuse this process to further abuse their noncitizen family members by threatening to withhold or withdraw sponsorship in order to control, coerce, and intimidate them. With the passage of VAWA and its subsequent reauthorizations, Congress provided noncitizens who have been abused by their U.S. citizen or lawful permanent resident relative the ability to

categories described in the 2022 TFR, if the renewal applicant timely filed an renewal EAD application.<sup>74</sup> That increase was available to eligible renewal applicants whose EAD applications were pending as of May 4, 2022, including those applicants whose employment authorization had already lapsed following the initial 180-day extension period, and to eligible applicants who filed a renewal EAD application during the 540-day period beginning on or after May 4, 2022, and ending October 26, 2023.<sup>75</sup> On October 27, 2023, the automatic extension renewal period reverted to 180 days (the automatic extension period under 8 CFR 274a.13(d)(1)) for eligible renewal EAD applications filed on or after October 27, 2023.<sup>76</sup>

## 2. Impact of the 2022 Temporary Final Rule

The 2022 TFR proved to be very successful at minimizing disruption to renewal EAD applicants and their U.S. employers that would have otherwise resulted from USCIS processing delays. Not only did the 2022 TFR immediately restore employment authorization and EAD validity for approximately 70,000 renewal EAD applicants who were already beyond the up to 180-day automatic extension period when the 2022 TFR published, but the 2022 TFR also helped nearly 280,000 renewal EAD applicants avoid a gap in employment authorization and/or employment authorization documentation based on applications filed on or after May 4, 2022, and on or before October 26, 2023.<sup>77</sup>

### D. 2024 Temporary Final Rule

#### 1. Overview

Although the 2022 TFR prevented a substantial number of individuals from experiencing a lapse in their employment authorization and/or documentation, new circumstances fundamentally unrelated to the reasons that lead up to the 2022 TFR caused the processing times for renewal EAD applications to remain at such a level that the 180-day automatic extension period remained insufficient to prevent a large number of lapses projected to start in May 2024. The continued lengthy processing times was primarily

due to a substantial increase in the number of initial EAD applications based on pending asylum applications (C08) that began in March 2023 and litigation regarding rules that require USCIS to process initial EAD applications for asylum applicants within 30 days of filing. Other causes included the allocation of USCIS personnel to assist with historically high levels of encounters at the southwest land border between the ports of entry, and additional TPS designations in FY 2022 and FY 2023.

Accordingly, DHS again took steps to help prevent certain renewal EAD applicants from experiencing a lapse in their employment authorization and/or documentation while their renewal applications remain pending while continuing to implement other solutions to return processing times to target levels. On April 8, 2024, DHS published a temporary final rule (“2024 TFR”) that, for certain renewal EAD applications filed beginning April 8, 2024, and ending on September 30, 2025, temporarily increased the automatic extension period from up to 180 days to up to 540 days. The 2024 TFR also increased the automatic extension period from up to 180 days to up to 540 days for applicants who properly filed their EAD renewals on or after October 27, 2023, and whose applications remained pending on or after April 8, 2024.<sup>78</sup>

Without the 2024 TFR, USCIS projected that approximately 800,000 renewal applicants would have been in danger of losing their employment authorization and/or documentation in the period beginning May 2024 and ending March 2026.<sup>79</sup> If faced with a disruption of their employment authorization and/or documentation, these renewal applicants might have lost their jobs through no fault of their own, and employers may have been faced with finding replacement workers, an undue burden that is exacerbated during a time when the U.S. economy has been experiencing more job openings than available workers.<sup>80</sup>

<sup>78</sup> See 89 FR 24628, 24630 (Apr. 8, 2024).

<sup>79</sup> USCIS projections based on data available on July 1, 2024, show that this number is now approximately 388,000. See section V.A.2., Background and Population, Table 12, Population Projections by Month, Rounded to Thousands.

<sup>80</sup> See 89 FR 24628, 24630 (April 8, 2024). At the time, the Bureau of Labor Statistics data showed that, as of December 2023, there were 0.7 unemployed persons per job opening. See U.S. Department of Labor, U.S. Bureau of Labor Statistics, “Number of unemployed persons per job opening, seasonally adjusted,” <https://www.bls.gov/charts/job-openings-and-labor-turnover/unemp-per-job-opening.htm> (last visited Feb. 6, 2024).

## 2. Impact of the 2024 Temporary Final Rule

As with the 2022 TFR, the 2024 TFR succeeded at minimizing disruption to renewal EAD applicants and their U.S. employers that would have otherwise resulted from USCIS processing delays. The 2024 TFR was projected to prevent approximately 540,000 applicants from experiencing a temporary lapse in employment authorization and/or employment authorization documentation during the 2-year period beginning May 2024.<sup>81</sup> As of July 1, 2024, approximately 3,500 renewal applicants avoided at least 1 day of lapse in employment authorization and/or documentation due to the 2024 TFR.<sup>82</sup> The 2024 TFR also provided DHS and USCIS with additional time to consider long-term solutions by soliciting public comments, evaluating the effects of policy and operational changes, and continuing to identify new strategies and efficiencies in light of ongoing developments.<sup>83</sup>

### III. Purpose and Discussion of the Final Rule

From time to time, one or more circumstances affecting USCIS operations have resulted in a significant increase in USCIS processing times for certain automatic extension-eligible categories of renewal EAD applications. Since the promulgation of the 180-day automatic extension rule in 2016, DHS deemed it necessary to issue TFRs in 2022 and 2024 to temporarily increase the automatic extension period to 540 days because a variety of circumstances resulted in processing times longer than the 180-day automatic extension period.<sup>84</sup> These TFRs were necessary to prevent a substantial number of renewal EAD applicants from experiencing a lapse in their employment authorization and/or documentation and to avert the significant harmful effect such lapses have for applicants, their families, their employers, and the public at large.

Without this rule making permanent the increase of the automatic extension period from up to 180 days to up to 540 days provided by the 2024 TFR, the longer automatic extension period would cease to apply to renewal applications filed after September 30,

<sup>81</sup> See 89 FR 24628, 24659, Table 6A.

<sup>82</sup> Source: USCIS analysis of renewal EAD automatic extension expirations data, provided by DHS, USCIS, OPQ, Claims 3 database; data provided July 24, 2024. See section VI.A.2, Background and Population, for more information.

<sup>83</sup> See 89 FR 24628, 24629 (Apr. 8, 2024).

<sup>84</sup> See 87 FR 26614 (May 4, 2022), 89 FR 24628 (Apr. 8, 2024).

<sup>74</sup> See 8 CFR 274a.13(d); see also 87 FR 26614, 26651 (May 4, 2022).

<sup>75</sup> See 8 CFR 274a.13(d); see also 87 FR 26614, 26651 (May 4, 2022).

<sup>76</sup> See 87 FR 26614, 26631 (May 4, 2022).

<sup>77</sup> Source: USCIS analysis of renewal EAD automatic extension expirations data, provided by DHS, USCIS, Office of Performance and Quality (OPQ), Claims 3 database; data provided November 2023.



2025.<sup>85</sup> Given the history of filing surges and other unpredictable circumstances that have adversely impacted renewal EAD application processing times since the original automatic extension provision was promulgated in 2016,<sup>86</sup> DHS has now determined that a permanent increase in the automatic extension period from up to 180 days to up to 540 days is necessary for the long-term protection of applicants from a lapse in their employment authorization and/or documentation. DHS believes that if the automatic extension period is not permanently increased from up to 180 days to up to 540 days, many renewal EAD applicants may be in danger of experiencing a gap in employment authorization and/or EAD validity again in the future. Such lapses in employment authorization and EAD validity would result in substantial and unnecessary harm to noncitizens who timely filed for extensions of employment authorization, their families, their employers, and the public at large.

To avert possible gaps in employment authorization and/or EAD validity for certain renewal EAD applicants and the harmful effects caused by such lapses, DHS is permanently amending existing DHS regulations to increase the automatic extension period to up to 540 days from the expiration date stated on their EADs. DHS is taking this step after having published two TFRs addressing the matter and seeking public comments on long-term solutions.<sup>87</sup> DHS is

<sup>85</sup> This final rule incorporates the content of the automatic extension provisions at 8 CFR 274a.13(d)(5) (promulgated under the 2022 TFR) and (d)(6) (promulgated under the 2024 TFR) into 8 CFR 274a.13(d)(1) and removes them from the CFR. 8 CFR 274a.13(d)(5) was effective until October 26, 2023, and, but for this final rule, would have remained in the CFR until October 15, 2025. But for this final rule, 8 CFR 274a.13(d)(6) would have been effective until September 30, 2025, and would have remained in the CFR until September 20, 2027. Thus, in this final rule, DHS is accounting for the content of both 8 CFR 274a.13(d)(5) and (d)(6) periods and the adoption of a permanent 540-day automatic extension period effective going forward. To simplify the regulatory text but maintain the content of all provisions for Form I-9, Employment Eligibility Verification, purposes, DHS is consolidating all of the automatic extension periods into one provision at 8 CFR 274a.13(d)(1). Applicants eligible for the up to 540-day automatic extension period under 8 CFR 274a.13(d)(5) and (d)(6) continue to be eligible under this final rule. This final rule, however, does not grant additional 540-day extension periods to those who were previously able to take advantage of a 540-day automatic extension period, even if the case remains pending at or before the 540-day mark under previous DHS rules.

<sup>86</sup> 81 FR 82398, 82455 (Nov. 18, 2016).

<sup>87</sup> In both TFRs, DHS sought public comments. As provided in Section IV, Discussion of Public Comments, as part of the 2024 TFR, DHS not only sought comments on the entire rule, but also asked commenters specifically to address options for long-

applying this rule to all renewal EAD application categories eligible for automatic extension pursuant to 8 CFR 274a.13(d).

The following sections in this preamble describe the history of a variety of unpredictable circumstances, such as sudden spikes in EAD application filings, and their impacts, which resulted in the need for the 2022 and 2024 TFRs. These examples illustrate that, without this rule permanently extending the automatic extension period from up to 180 days to up to 540 days, DHS, renewal EAD applicants, their families, and their employers would face increased uncertainty about the possibility of lapsed employment authorization and/or documentation in the future. DHS notes that it is not an efficient use of its resources to issue TFRs whenever circumstances arise resulting in significant increases in renewal EAD application processing times. DHS believes that this action will save government resources and provide predictability and stability to applicants, families, employers, and communities.

DHS is therefore permanently extending the automatic extension period from up to 180 days to up to 540 days in order to guard against the effects of unpredictable future events such as those that led to the two TFRs.

#### A. Circumstances Resulting in the 2022 Temporary Final Rule

##### 1. USCIS Enjoined From Increasing Its Filing Fees

USCIS is a fee-based agency that relies on predictable fee revenue and its carryover from the previous year. USCIS began experiencing fiscal troubles in early December 2019, when at least one USCIS directorate initiated a hiring freeze.<sup>88</sup> These fiscal troubles were due in part to the fact that USCIS had not been able to update its fee structure

term solutions, including whether the solution provided in the TFR should be made permanent or be subject to modification. See 2024 TFR, at 24628. In this final rule, DHS is responding to these comments and finalizing the approach by permanently codifying in DHS regulations the solutions of the prior TFRs. Therefore, this final rule complies with the procedural requirements for rulemaking under the Administrative Procedure Act (APA), 5 U.S.C. 553, having provided adequate notice and an opportunity to comment before promulgating this final rule. See *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 684–687 (2020) (holding that an interim final rule’s “request for comments readily satisfied the APA notice requirements”).

<sup>88</sup> USCIS’ Field Operations Directorate (FOD) initiated a hiring freeze in December 2019; USCIS’ Service Center Operations Directorate (SCOPS) did the same starting in February 2020.

since the 2016 Fee Rule<sup>89</sup> (including fees for Form I-765), meaning that USCIS was unable to fully cover the costs of administering current and projected volumes of immigration benefit requests.

DHS promulgated a new Fee Rule in August 2020 to address this disparity between its filing fees and the costs of adjudicating immigration benefit requests.<sup>90</sup> In September 2020, however, the 2020 Fee Rule was enjoined before it took effect.<sup>91</sup> As such, the fee for Form I-765 remained at \$410, which was the fee set by the earlier 2016 Fee Rule.<sup>92</sup> The 2016 Fee Rule also exempted applicants from paying a fee if filing a Form I-765 to request a renewal or replacement EAD under 8 CFR 274a.12(c)(9) (pending adjustment of status application), as well as some additional categories.<sup>93</sup>

USCIS continued to have to rely on the fee schedule established in the 2016 Fee Rule, which did not fully account for costs associated with adjudicating benefit requests. This unsustainable fiscal situation resulted in the inability to fund sufficient new officer positions to handle the agency’s adjudication workload.<sup>94</sup> This meant, in part, that USCIS was already in a precarious financial position with regard to staffing when the COVID-19 pandemic began. The litigation enjoining the implementation of the 2020 Fee Rule is an example of an external event that negatively impacted renewal EAD application processing times.<sup>95</sup>

<sup>89</sup> See 81 FR 73292, 73302 (Oct. 24, 2016).

<sup>90</sup> See *U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements*, 85 FR 46788 (Aug. 3, 2020) (“2020 Fee Rule”). The 2020 Fee Rule, among other things, adjusted certain immigration and naturalization benefit request fees charged by USCIS, removed certain fee exemptions, and changed the fee waiver requirement.

<sup>91</sup> On September 29, 2020, the U.S. District Court for the Northern District of California in *Immigration Legal Resource Center, et al. v. Wolf, et al.*, 20-cv-05883-JWS, preliminarily enjoined DHS from implementing or enforcing any part of the 2020 Fee Rule.

<sup>92</sup> See 81 FR 73292 (Oct. 24, 2016).

<sup>93</sup> See 85 FR 46788 (Aug. 3, 2020). Additional categories exempt from the filing fee include 8 CFR 274a.12(a)(8) and (10) and (c)(1), (4), (7), and (16).

<sup>94</sup> From FY 2015 through FY 2020, USCIS received a range of approximately 2.0 to 2.3 million Form I-765 filings (seeking both initial EADs and renewal of initial EADs) each fiscal year. In FY 2021, this figure increased to approximately 2.6 million. This increase in Form I-765 filings, which was largely observed in the volume of renewal EAD applications sought in categories eligible for automatic extension of EADs, contributed to increased renewal EAD application processing times.

<sup>95</sup> On January 31, 2024, DHS promulgated a new Fee Rule, which became effective April 1, 2024. See 89 FR 6194 (Jan. 31, 2024).

## 2. Public Health Emergency Caused by the COVID-19 Pandemic

On January 31, 2020, the Secretary of Health and Human Services (HHS) declared a public health emergency under section 319 of the Public Health Service Act (42 U.S.C. 247d), in response to COVID-19.<sup>96</sup> On February 24, 2021, the President issued a continuation of the national emergency concerning the COVID-19 pandemic.<sup>97</sup> Effective October 15, 2021, HHS renewed the public health emergency determination.<sup>98</sup> On January 14, 2022, as a result of the continued impact of the COVID-19 pandemic, HHS again renewed the determination that a public health emergency exists.<sup>99</sup>

As noted above, USCIS was already in a precarious financial situation in 2019. This was exacerbated by a significant drop in receipts across many of the most common benefit types at the beginning of the COVID-19 pandemic in spring 2020.<sup>100</sup> The significant drop in revenue

<sup>96</sup> See HHS, Determination that a Public Health Emergency Exists (Jan. 31, 2020), <https://aspr.hhs.gov/legal/PHE/Pages/2019-nCoV.aspx> (last visited Aug. 19, 2024).

<sup>97</sup> Notice on the Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic, 86 FR 11599 (Feb. 26, 2021); Proclamation 9994 of March 13, 2020, Declaring a National Emergency Concerning the Coronavirus Disease (COVID-19) Outbreak, 85 FR 15337 (Mar. 18, 2020).

<sup>98</sup> HHS, Renewal of Determination that a Public Health Emergency Exists (Oct. 15, 2021), <https://aspr.hhs.gov/legal/PHE/Pages/COVID-15Oct21.aspx> (last visited Aug. 23, 2024).

<sup>99</sup> See HHS, Office of the Assistant Secretary for Preparedness and Response, Renewal of Determination that a Public Health Emergency Exists (Jan. 14, 2022), <https://aspr.hhs.gov/legal/PHE/Pages/COVID19-14Jan2022.aspx> (last visited Aug. 19, 2024).

<sup>100</sup> See 2020 USCIS Statistical Annual Report, p. 4: “[During the onset of the COVID-19 pandemic], incoming receipts were 32 percent lower compared to the same time period in FY 2019. By the end of FY 2020, USCIS received about 5% fewer receipts than in FY 2019. Although receipts decreased in some of the most frequently submitted form types, others such as the N-400 (Application for Naturalization) and I-129 (Petition for Nonimmigrant Worker) increased slightly from FY 2019.” In addition to the lowest number of receipts in the past 5 years, USCIS also completed the lowest number of benefit requests in the past 5 years. The worst rates of completion were observed during the beginning of the pandemic when USCIS field offices and ASCs were closed to the public. While USCIS attempted to recover by shifting adjudications to form types not requiring in-person appearances, USCIS still completed fewer benefit requests than it received in FY 2020. See 2020 USCIS Statistical Annual Report, p. 4.

early in the pandemic led USCIS to plan for a sweeping furlough of approximately 70 percent of its workforce to avoid financial collapse, including furloughing immigration services officers who adjudicate Form I-765.<sup>101</sup> In an attempt to avoid these furlough measures, USCIS took steps to preserve sufficient funds to meet payroll and carryover obligations. These measures included substantial cuts for supplies, facilities, overtime, and contractor support services, as well as an agency-wide hiring freeze lasting from May 1, 2020, through March 31, 2021. The loss of overtime funds hindered USCIS’ ability to address and mitigate backlogs with existing staff, which has been a strategy used successfully in the past to ensure processing times remain within goals.<sup>102</sup> This option was not available in 2020, due to USCIS’ worsening fiscal situation beginning in late 2019 and continuing into 2020 and part of 2021.

These fiscal issues had a direct impact on staffing, and insufficient staffing levels directly impacted the processing times for Form I-765. In addition to a direct shortage of staff due to hiring freezes, USCIS experienced an increase in attrition following announcement of a potential furlough that could have impacted nearly 70 percent of employees.<sup>103</sup> The hiring freeze also meant that the higher-than-normal number of vacancies could not be filled. Additionally, several initiatives took staff away from their normal duties such as efforts relating to unaccompanied children and processing petitions and applications by or on behalf of Afghan evacuees. The loss of contractor support services also hindered USCIS’ ability to intake filings efficiently and prepare cases for adjudication by officers.

All these factors contributed to a decrease in Form I-765 completions. For example, in FY 2019, the Service Center Operations Directorate (SCOPS) allocated 343,399 officer hours to its

<sup>101</sup> During this time period, USCIS had an estimated \$1.2 billion budget shortfall.

<sup>102</sup> For example, in FY 2019, USCIS used \$5.52 million of overtime funds for assigned staff to conduct credible and reasonable fear interviews, as well as Migrant Protection Protocols (MPP) non-refoulement interviews.

<sup>103</sup> See DHS, USCIS, News Release, *Deputy Director for Policy Statement of USCIS’ Fiscal Outlook* (June 25, 2020), <https://www.uscis.gov/news/news-releases/deputy-director-for-policy-statement-on-uscis-fiscal-outlook>.

Form I-765 workload<sup>104</sup> and completed 1,443,235 adjudications. By comparison, in FY 2020, SCOPS allocated 327,947 (or approximately 4.5 percent fewer) officer hours to the same workload and subsequently was only able to complete 1,379,745 (or approximately 4.4 percent fewer) adjudications. These reductions were partly attributable to the overall decrease in staff. At the start of FY 2020, SCOPS had 5,102 employees. This diminished to 4,886 at the start of FY 2021 and 4,731 at the start of FY 2022 as the effects of attrition and the hiring freeze continued. This overall decrease of approximately 7.3 percent did not include the additional loss of I-765 adjudication hours that stemmed from SCOPS supporting several programs requesting detailees.<sup>105</sup> The number of detailees temporarily missing from the SCOPS workforce was not static but exceeded 200 employees at points during FY 2021, leaving SCOPS staffed at levels less than 89 percent of what existed going into FY 2020. This data does not include contractor hours, which also were severely impacted by USCIS’ fiscal situation as USCIS was forced to reduce the number of contractors available to assist with case processing.

USCIS was also unable to surge additional resources to increase officer hours adjudicating Form I-765 applications because of USCIS’ limited resources and the need to manage other competing priorities in FY 2021. For example, USCIS surged officers to adjudicate employment-based Form I-485 applications to minimize the number of employment-based immigrant visas that would go unused at the end of FY 2021, after an extraordinary number of such unused family-preference visa numbers from FY 2020 “fell across” to the employment-based visa allocation for FY 2021,<sup>106</sup> due primarily to Department of State consular closures caused by the COVID-19 pandemic.

<sup>104</sup> Form I-765 workload includes requests for initial, renewal, and replacement employment authorization and/or EADs.

<sup>105</sup> A detailee is an employee who is temporarily detailed, *i.e.*, temporarily assigned, to a different position for a specified period, with the employee returning to his or her regular duties at the end of the detail.

<sup>106</sup> See generally INA secs. 201(d)(2)(C), 8 U.S.C. 1151(d)(2)(C).

TABLE 1—IMPACT OF STEADILY DECREASING STAFFING LEVELS ON SCOPS’ FORM I–765 COMPLETIONS (INITIAL AND RENEWAL APPLICATIONS)

Fiscal year	Officer hours allocated	Form I–765 completions
2019 .....	343,399 .....	1,443,235.
2020 .....	327,947 (approximately 4.5 percent fewer than 2019) .....	1,379,745 (approximately 4.4 percent fewer than 2019).
2021 .....	314,924 (approximately 8.3 percent fewer than 2019 and 4.0 percent fewer than 2020).	1,249,548 (approximately 13.4 percent fewer than 2019 and 9.4 percent fewer than 2020).

**Note:** This data does not include contractor hours, which also were severely impacted by USCIS’ fiscal situation as USCIS was forced to reduce the number of contractors available to assist with case processing. At the time of the 2022 TFR, SCOPS’ contractor staff had been reduced by approximately 8.2% since October 1, 2020.

The Field Office Directorate’s National Benefit Center (NBC), which also adjudicates a number of Form I–765 applications<sup>107</sup> observed a similar reduction in staff and completions.

TABLE 2—IMPACT OF STEADILY DECREASING STAFFING LEVELS ON NBC’S FORM I–765 COMPLETIONS (INITIAL AND RENEWAL APPLICATIONS)

Fiscal year	Officer hours allocated	Form I–765 completions
2019 .....	115,510 .....	612,464.
2020 .....	112,266 (approximately 2.8 percent fewer than 2019) .....	605,105 (approximately 1.2 percent fewer than 2019).
2021 .....	102,099 (approximately 11.6 percent fewer than 2019 and 9.1 percent fewer than 2020).	509,973 (approximately 16.7 percent fewer than 2019 and 15.7 percent fewer than 2020).

**Note:** This data does not include contractor hours, which also were severely impacted by USCIS’ fiscal situation as USCIS was forced to reduce the number of contractors available to assist with case processing.

Although the United States is no longer in a pandemic-related health emergency, this is an example of an unanticipated circumstance that adversely impacted USCIS renewal EAD processing times and was a significant factor in the decision to issue the 2022 TFR.

3. Unprecedented Increase in EAD Application Filings

An additional contributing factor to the severe backlog and increased

processing times for Forms I–765 was a substantial and unprecedented 2-month increase of renewal EAD applications in March and April 2021, and a sustained increase in filings thereafter. In calendar year (CY) 2019, the average number of monthly renewal applications filed for the C08, C09, and C10 categories combined was 46,715. In CY 2020, the average number of monthly renewal applications filed for these three categories was 43,232. In March 2021, the renewal receipt numbers for these

three categories spiked 56 percent over the previous month and 76.4 percent over the monthly average total for 2020. In April 2021, the renewal receipt numbers for these three categories remained elevated such that they were 25.6 percent higher than February 2021, and 53.6 percent over the monthly average total for 2020. The increase in renewal EAD applications was unexpected based on historical filing patterns.<sup>108</sup>

TABLE 3—SURGE IN RENEWAL FORM I–765 FILINGS

Month	C08 category	C09 category	C10 category	Total
February 2021 .....	30,857	14,661	8,367	53,885
March 2021 .....	52,007	19,589	10,840	82,436
April 2021 .....	42,101	15,189	9,134	66,424

In the eight months following April 2021, the receipt numbers for these categories fell to an average of 52,400 receipts per month but was still 21 percent above the average monthly total for CY 2020. The increase in the number and processing time of asylum and

adjustment of status applications, which are the two most populous EAD filing categories eligible for the automatic extension under 8 CFR 274a.13(d)(1), may have led to this sustained increase in applications for initial and renewal employment authorization (in the C08

and C09 categories, respectively), which further compounded the Form I–765 adjudication backlog.

Specifically, in the years leading up to FY 2022, asylum application receipts outpaced available resources, leading to an increase in pending asylum cases, both in affirmative and defensive filings,

<sup>107</sup> Such as initial and renewal Forms I–765 filed under 8 CFR 274a.12(c)(9) and (10), which experienced a dramatic growth in processing times in 2021, as detailed in this rule.

<sup>108</sup> This increase in Form I–765 filings may have been driven primarily by litigation and the “frontlog” of applications at the three USCIS lockbox facilities, which receive and process applications and payments in Chicago, Illinois; Phoenix, Arizona; and Lewisville, Texas. On July

20, 2020, Casa de Maryland, Inc. filed suit against then-Acting DHS Secretary Chad Wolf and DHS to enjoin changes to EAD rules for asylum seekers. On September 11, 2021, the U.S. District Court of Maryland issued a preliminary injunction of the new EAD rules. See *Casa de Maryland v. Wolf*, 486 F.Supp.3d 928 (D. Md. Sept. 11, 2020). Consequently, approximately 23,000 applications pending at the USCIS lockbox were rejected in late October 2020 for a failure to pay the required

biometrics fee or a failure to provide proof that the applicant was a member of the litigation class. These applications were refiled and, coupled with the prioritization of initial Form I–765 applications under category C08 due to the litigation, led to a redirection of resources away from renewal EAD applications. In addition, as noted above, the lockbox was experiencing a “frontlog” of applications, which led to a processing delay.

as shown in Table 4.<sup>109</sup> The increase in pending asylum cases contributed to the increase in C08 renewal filings in FY

2021, which further impacted the renewal EAD application backlog.

TABLE 4—TOTAL ASYLUM CASES PENDING

	DOJ <sup>110</sup>	USCIS <sup>111</sup>	Total
Total Asylum Cases Pending in:			
FY 2017 (Sep 2017) .....	377,140	289,835	666,975
FY 2018 (Sep 2018) .....	473,510	319,202	792,712
FY 2019 (Sep 2019) .....	608,976	339,836	948,812
FY 2020 (Sep 2020) .....	647,923	386,014	1,033,937
FY 2022 (Dec 2021) .....	628,551	432,341	1,060,892

In addition, the number of employment-based adjustment of status applications increased significantly in FY 2021 due to the number of employment-based visas that became available as a result of unusually low visa usage in other categories in FY 2020 due to the COVID-19 pandemic. At the start of FY 2021, there were approximately 126,000 employment-based adjustment of status applications pending with USCIS. Approximately 313,000 employment-based adjustment of status applications were received during FY 2021, which likely contributed to the increase in C09 initial filings in FY 2021, further taxing USCIS' resources to timely process renewal applications. USCIS also saw significant increases in filings across other benefit request types during CY 2021.<sup>112</sup>

In CY 2021, USCIS received approximately 1,290,000 initial Forms I-765, which was 23 percent higher than the volume received in CY 2020 (approximately 1,050,000) and 18 percent higher than the volume received in CY2019 (approximately 1,090,000). Similarly, in CY 2021, USCIS received approximately 1,260,000 renewal EAD applications, which was 21 percent higher than the volume received in CY 2020 (approximately 1,040,000) and 13 percent higher than the volume received in CY 2019 (approximately 1,120,000).

TABLE 5A—INITIAL FORM I-765 FILINGS

Calendar year	Form I-765 filings	Surge or difference
2019 .....	1,090,000	
2020 .....	1,050,000	4 percent lower than 2019.
2021 .....	1,290,000	18 percent higher than 2019. 23 percent higher than 2020.

TABLE 5B—RENEWAL FORM I-765 FILINGS

Calendar year	Form I-765 filings	Surge or difference
2019 .....	1,120,000	
2020 .....	1,040,000	7 percent lower than 2019.
2021 .....	1,260,000	13 percent higher than 2019. 21 percent higher than 2020.

4. Combined Impact on Renewal EAD Application Processing Times

In summary, because of the financial strains caused by the combination of the litigation resulting in the enjoining of the 2020 Fee Rule and the impact of the COVID-19 pandemic, USCIS was unable to handle the concurrent spike and monthly increase in renewal EAD filings. The average monthly receipts in 2021 for the automatic extension categories were 60,300, which was 13,500 per month (or 29 percent) higher than 2020 monthly averages. In addition to this higher overall receipt volume in 2021, there was a surge in receipts in March 2021 (88,500) and April 2021 (71,200) that led to a rapid increase in

pending applications. On top of the higher receipt volumes, due to staffing issues, the average number of monthly completions in 2021 was 33,900 per month, which was 10,600 per month (or 24 percent) lower than 2020 monthly averages. The combination of higher receipts and lower completions led to increased processing times, which downstream resulted in higher numbers of renewal applications pending past the 180-day automatic extension period.

B. Circumstances Resulting in the 2024 Temporary Final Rule

1. Overview

On April 8, 2024, DHS published the 2024 TFR that, for certain renewal EAD applications filed during a limited period that ends on September 30, 2025, again temporarily increased the automatic extension period from up to 180 days to up to 540 days.<sup>113</sup> The multiple circumstances that resulted in the 2024 TFR are summarized in the following sections. These examples illustrate the unpredictable events that arise from time to time and render the 180-day automatic extension period insufficient to protect renewal applicants and their employers from the harms resulting from a lapse in employment authorization and/or documentation.

<sup>109</sup> See Background, p. 2, in Backlog Reduction of Pending Affirmative Asylum Cases: Fiscal Year 2021 Report to Congress (Oct. 20, 2021), <https://www.dhs.gov/sites/default/files/2021-12/USCIS%20-%20Backlog%20Reduction%20of%20Pending%20Affirmative%20Asylum%20Cases.pdf> (last visited Aug. 19, 2024) (“The affirmative asylum backlog is the result of a prolonged, significant increase in affirmative asylum application filings and credible fear screenings, which are processed by the U.S. Citizenship and Immigration Services (USCIS) asylum offices. Between FY 2013 and FY 2017, despite significant staffing increases, receipt growth in asylum office workloads outpaced the expansion

of asylum office staffing and the establishment of new or expanded facilities needed to support additional staffing growth.”).

<sup>110</sup> See Executive Office of Immigration Review Adjudication Statistics, Total Asylum Applications (Jan 19, 2022), <https://www.justice.gov/eoir/page/file/1106366/download> (last visited Aug. 19, 2024).

<sup>111</sup> Data reflects affirmatively filed Form I-589 asylum applications and do not include defensive asylum claims before a DOJ EOIR immigration court. See USCIS, Number of Service Wide Forms, October 1, 2021–December 31, 2021 (last updated Feb. 2022), [https://www.uscis.gov/sites/default/files/document/reports/Quarterly\\_All\\_Forms\\_FY2022\\_Q1.pdf](https://www.uscis.gov/sites/default/files/document/reports/Quarterly_All_Forms_FY2022_Q1.pdf) (last visited Aug. 19, 2024).

<sup>112</sup> For example, USCIS also encountered large increases of filings of Form I-131, Application for Travel Document, possibly related to the increase in filings of Form I-485, Application to Register Permanent Residence. From CY 2020 to CY 2021, USCIS observed an overall 25.8 percent increase in receipts across form types. Although this represents a substantial increase, there was a 29 percent increase in renewal EAD applications in the automatic extension categories.

<sup>113</sup> See 89 FR 24628 (Apr. 8, 2024). The 2024 TFR also increased the automatic extension period from up to 180 days to up to 540 days for applicants who properly filed their EAD renewals on or after October 27, 2023.

## 2. Surge in Initial EAD Application Filings by Pending Asylum Applicants

In FY 2023, USCIS experienced a surge in EAD applications primarily<sup>114</sup> driven by initial EAD applications by individuals with pending asylum applications (C08).<sup>115</sup> The increase in initial C08 EAD applications placed a substantial strain on USCIS resources due to the high volume of cases.

In addition to increased EAD filings, processing of C08 EAD applications was also affected by litigation regarding two rules, published in 2020, that amended the regulations governing EAD applications associated with asylum applications.

The regulation at 8 CFR 208.7(a)(1), which was originally promulgated in 1994,<sup>116</sup> requires USCIS to adjudicate initial C08 EAD applications within 30 days of filing.<sup>117</sup> However, on June 22, 2020, DHS published a final rule titled “Removal of 30-day Processing Provision for Asylum Applicant-Related Form I–765 Employment Authorization Applications” (the Timeline Repeal Rule), which amended 8 CFR 208.7(a)(1) to remove the 30-day processing requirement.<sup>118</sup> DHS subsequently published another final rule titled “Asylum Application, Interview, and Employment Authorization for Applicants” (the Broader Asylum EAD Rule), which made further changes to DHS’s regulations governing eligibility for employment authorization based on a pending asylum application, including extending the time period required for asylum applicants to apply for an EAD from 180 days to 365 days (not including delays caused or requested by an applicant) and imposing other restrictions and requirements.<sup>119</sup>

Litigation followed the publication of these two rules (“2020 Asylum EAD

Rules”), including *CASA*<sup>120</sup> in the U.S. District Court for the District of Maryland, and *Asylumworks*<sup>121</sup> in the U.S. District Court for the District of Columbia. On September 11, 2020, the court in *CASA* imposed a preliminary injunction requiring that USCIS not apply the 2020 Asylum EAD Rules to members of *CASA* and Asylum Seeker Advocacy Project organizations. On February 7, 2022, the U.S. District Court for the District of Columbia issued an order in *Asylumworks* vacating the 2020 Asylum EAD Rules in their entirety.<sup>122</sup> On September 22, 2022, DHS published a final rule titled “Asylum Application, and Employment Authorization for Applicants; Implementation of Vacatur”<sup>123</sup> that removed the changes made by the 2020 Asylum EAD Rules, restoring the regulatory text that predated the 2020 Asylum EAD Rules and thus implementing the court order in *Asylumworks*.

As a result of the *Asylumworks* court order, since February 7, 2022, USCIS has been required to process initial EAD applications for all asylum applicants within 30 days of filing for their EAD. While the court ordered a return to a regulatory requirement that had existed until 2020, the burden created by the court’s order was significant and impacted overall EAD processing due to the surge in C08 EAD applications.

Following the *Asylumworks* vacatur, at the end of February 2022, there were 93,639 pending cases to which the 30-day timeframe processing requirement applied. To address the backlog of cases and comply with the court’s order, USCIS worked to increase resources for the entire initial C08 EAD application workload, including adding staff (pulling from other workloads as well as new hires) and offering overtime.<sup>124</sup>

## 3. Significant Increase in Referrals to USCIS for Credible Fear Assessments

For the period leading up to the 2024 TFR, economic and political instability

around the world has been fueling high levels of global migration, including in the Western Hemisphere.<sup>125</sup> For example, in December 2022, U.S. Border Patrol (USBP)<sup>126</sup> encountered approximately 222,000 noncitizens between ports of entry, then second only to May 2022 (approximately 224,000 encounters). DHS announced sweeping new measures to address the anticipated further increase in migration, including a new rule that introduced a rebuttable presumption of asylum ineligibility for certain noncitizens<sup>127</sup> and a surge in resources to expeditiously process and remove individuals who arrive at the southwest border without a lawful basis to remain.<sup>128</sup> The number of encounters was highly variable. For example, July 2023 saw 132,642 encounters while December 2023 saw 249,735 encounters, before falling again in January 2024 (176,205).<sup>129</sup> With this overall increase in encounters at the southwest border, there was also an increase in referrals to USCIS for credible fear screenings<sup>130</sup> of

<sup>125</sup> See 88 FR 31314, 31315 (May 16, 2023) (discussing the reasons for the highest levels of global migration since World War II).

<sup>126</sup> USBP is the component of U.S. Customs and Border Protection (CBP) within DHS responsible for U.S. border security between ports of entry. USBP’s mission is to detect and prevent the illegal entry of individuals into the United States. See DHS, CBP, *Along the U.S. Borders* (last modified Sept. 6, 2024), <https://www.cbp.gov/border-security/along-us-borders> (last visited Oct. 23, 2024).

<sup>127</sup> See 88 FR 31314, 31314 (May 16, 2023).

<sup>128</sup> See DHS, *Fact Sheet: U.S. Government Announces Sweeping New Actions to Manage Regional Migration* (Apr. 27, 2023), <https://www.dhs.gov/news/2023/04/27/fact-sheet-us-government-announces-sweeping-new-actions-manage-regional-migration> (last visited Oct. 23, 2024).

<sup>129</sup> See DHS, CBP, *Southwest Land Border Encounters* (last modified Oct. 22, 2024), <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (last visited Oct. 23, 2024).

<sup>130</sup> Under the INA, certain noncitizens arriving in the United States who are found to be inadmissible under either section 212(a)(6)(C) of the INA, 8 U.S.C. 1182(a)(6)(C) (misrepresentation) or section 212(a)(7) of the INA, 8 U.S.C. 1182(a)(7) (for failure to meet documentation requirements for admission), may be removed from the United States without a further hearing or review (expedited removal) unless the noncitizen indicates either an intention to apply for asylum under section 208 of the INA, 8 U.S.C. 1158, or expresses a fear of persecution or torture. See INA sec. 235(b)(1)(A)(i), (iii), 8 U.S.C. 1225(b)(1)(A)(i), (iii); 8 CFR 235.3(b)(4). If such a noncitizen indicates an intention to apply for asylum or expresses a fear of persecution, torture, or of returning to their home country, the immigration officer refers the noncitizen for an interview with a USCIS asylum officer, who will determine if the noncitizen has a credible fear of persecution in his or her country of nationality or last habitual residence. See INA sec. 235(b)(1)(A), 8 U.S.C. 1225(b)(1)(A). If the USCIS asylum officer determines the noncitizen has a credible fear of persecution or torture, the noncitizen may apply for asylum and remain in the United States until a final determination is made on the asylum application by an immigration judge or,

<sup>114</sup> Other factors related to EAD processing affected USCIS’ workload and personnel, such as processing EADs for noncitizens who were paroled after scheduling an appointment through CBP One or through the Cuban, Haitian, Nicaraguan, and Venezuelan parole processes. However, these processes did not significantly compound the pressures on EAD renewal processing.

<sup>115</sup> Pending asylum applicants may not be granted employment authorization until 180 days after the filing of the application for asylum. INA sec. 208(d)(2), 8 U.S.C. 1158(d)(2). These initial C08 applicants may file their EAD applications once the asylum application has been pending for 150 days. 8 CFR 208.7(a)(1).

<sup>116</sup> See 59 FR 62284, 62289 (Dec. 5, 1994).

<sup>117</sup> On July 26, 2018, in *Rosario v. USCIS*, the U.S. District Court for the Western District of Washington granted summary judgment against the government and issued an order requiring USCIS to comply with the 30-day regulatory timeline at 8 CFR 208.7. See 365 F. Supp. 3d 1156 (W.D. Wash. 2018).

<sup>118</sup> See 85 FR 37502 (June 22, 2020).

<sup>119</sup> See 85 FR 38532 (June 26, 2020).

<sup>120</sup> See *CASA de Maryland, Inc. v. Wolf*, 486 F. Supp. 3d 928 (D. Md. 2020).

<sup>121</sup> *Asylumworks v. Mayorkas*, 590 F. Supp. 3d 11 (D.D.C. Feb. 7, 2022).

<sup>122</sup> See *Asylumworks v. Mayorkas*, 590 F. Supp. 3d 11 (D.D.C. Feb. 7, 2022) (“*Asylumworks* vacatur”). The vacatur decision in *Asylumworks* effectively mooted the *CASA* case. The *CASA* court acknowledged the case had become moot on May 18, 2023, when it granted the government’s motion to dismiss. See *CASA de Maryland, Inc. v. Mayorkas*, No. 8:20–CV–2118–PX, 2023 WL 3547497 (D. Md. May 18, 2023).

<sup>123</sup> See 87 FR 57795 (Sept. 22, 2022).

<sup>124</sup> Receipts of initial C08 EAD applications for the first half of FY 2022 averaged 16,900 per month, and for the second half of FY 2022, 27,500 receipts per month. Average monthly receipts of initial C08 EAD applications for the first half of FY 2023 was 55,000, and it increased to 78,700 in the second half of FY 2023.

individuals who express an intention to apply for asylum or who express a fear of persecution, torture, or returning to their home country. In FY 2023, USCIS received a historic high of 149,700 credible fear referrals.<sup>131</sup> Following implementation of a Presidential Proclamation and related interim final rule in June 2024, crossings between ports of entry fell by over 55 percent.<sup>132</sup>

The Directorate at USCIS that processes these claims, the Refugee, Asylum and International Operations Directorate (“RAIO”), had insufficient staff to accommodate such increased volume. To address the impact of these high numbers of credible fear referrals from the southwest border on existing asylum and credible fear procedures, USCIS detailed USCIS personnel, including officers who adjudicate EAD applications, to the USCIS RAIO directorate for up to 120 days to conduct credible fear screenings.<sup>133</sup> However, because only an immigration officer who is also an “asylum officer,” as defined at section 235(b)(1)(E) of the Act, 8 U.S.C. 1225(b)(1)(E), may conduct credible fear screenings, USCIS had to ensure that any non-asylum officers received the necessary asylum officer training before they could begin the detail.<sup>134</sup> Thus, many USCIS detailees

in some cases, by an asylum officer. See generally INA sec. 235(b), 240, 8 U.S.C. 1225(b), 1229a; see also 8 CFR 208.2, 208.30 and 1208.30. The HSA grants to DHS the authority to adjudicate affirmative asylum applications—i.e., applications for asylum filed with DHS for individuals not in removal proceedings—and authority to conduct credible fear interviews, make credible fear determinations in the context of expedited removal, and establish procedures for further consideration of asylum applications after an individual is found to have a credible fear. See 6 U.S.C. 271(b)(3); INA sec. 235(b)(1)(B), 8 U.S.C. 1225(b)(1)(B).

<sup>131</sup> See DHS, USCIS, Asylum Division Monthly Statistics Report, Fiscal year 2023, October 2022 to September 2023, [https://www.uscis.gov/sites/default/files/document/data/asylumfiscalyear2023todatestats\\_230930.xlsx](https://www.uscis.gov/sites/default/files/document/data/asylumfiscalyear2023todatestats_230930.xlsx) (last visited Oct. 23, 2024).

<sup>132</sup> See DHS, *Fact Sheet: Joint DHS-DOJ Final Rule Issued to Restrict Asylum Eligibility for Those Who Enter During High Encounters at the Southern Border* (Sept. 30, 2024), <https://www.dhs.gov/news/2024/09/30/fact-sheet-joint-dhs-doj-final-rule-issued-restrict-asylum-eligibility-those-who> (last visited Oct. 23, 2024).

<sup>133</sup> See DHS, *Fact Sheet: U.S. Government Announces Sweeping New Actions to Manage Regional Migration* (Apr. 27, 2023), <https://www.dhs.gov/news/2023/04/27/fact-sheet-us-government-announces-sweeping-new-actions-manage-regional-migration> (last visited Oct. 23, 2024) (“DHS and the Department of Justice (DOJ) are also surging asylum officers and immigration judges, respectively, to complete immigration proceedings at the border more quickly.”). Approximately 157 immigration officer FTEs participated in a credible fear detail in FY 2023, and approximately 212 FTEs participated from May 2023 to January 2024.

<sup>134</sup> See INA sec. 235(b)(1)(B)(i) and (b)(1)(e), 8 U.S.C. 1225(b)(1)(B)(i) and (b)(1)(e); 8 CFR 208.1(b). As required by law, asylum officers receive special

were required to take a full-time asylum officer training course lasting several weeks in addition to the 120 day detail period. Diverting adjudicatory resources by training and detailing adjudicators to conduct credible fear screenings significantly strained operational resources for renewal EAD adjudications, resulting in increased processing times.<sup>135</sup>

Positive credible fear determinations also created a downstream increase in applications for employment authorization, as these individuals may apply for asylum before the Executive Office for Immigration Review, which renders them eligible to apply for employment authorization after their asylum application has been pending for 150 days.

#### 4. Impact of Asylum Filing Surges and Backlogs on C08 Renewals

USCIS received historic levels of affirmative asylum applications in FY 2022 and FY 2023. In FY 2022, USCIS received more than 240,600 affirmative asylum applications.<sup>136</sup> In FY 2023, USCIS received more than 454,300 affirmative asylum applications.<sup>137</sup> Despite efforts to adjudicate these pending applications, backlogs for both affirmative (filed with USCIS) and defensive (filed with the Executive Office for Immigration Review (EOIR)) asylum applications have grown. Specifically, as of September 30, 2023, over 1.062 million affirmative asylum applications were pending with USCIS and 937,000 total asylum applications were pending before EOIR, respectively. Owing to these backlogs, USCIS has seen an increase in C08 renewal EAD applications. Because initial C08 EADs issued prior to September 2023 were valid for a period of 2 years, the backlogs in asylum applications at

training, including training on international human rights law, non-adversarial interview techniques, and country conditions information.

<sup>135</sup> On October 20, 2023, the Administration requested \$755 million in supplemental funding from Congress for USCIS to hire additional officers to adjudicate an increase in asylum filings and address the backlog in processing employment authorization applications and immigration benefit requests. See White House, Office of Management and Budget, *Letter regarding critical national security funding needs for FY 2024*, <https://www.whitehouse.gov/wp-content/uploads/2023/10/Letter-regarding-critical-national-security-funding-needs-for-FY-2024.pdf> (last visited Oct. 23, 2024).

<sup>136</sup> See DHS, USCIS, Asylum Division Monthly Statistics Report, Fiscal Year 2022, October 2021 to September 2022, <https://www.uscis.gov/sites/default/files/document/data/AsylumFiscalYear2022ToDateStats.xlsx> (last visited Oct. 23, 2024).

<sup>137</sup> See DHS, USCIS, Asylum Division Monthly Statistics Report, Fiscal Year 2023, October 2022 to September 2023, [https://www.uscis.gov/sites/default/files/document/data/asylumfiscalyear2023todatestats\\_230930.xlsx](https://www.uscis.gov/sites/default/files/document/data/asylumfiscalyear2023todatestats_230930.xlsx) (last visited Oct. 23, 2024).

USCIS and EOIR were projected to result in over 770,000 C08 renewal EAD application filings during the effective period of the 2024 TFR.<sup>138</sup>

#### 5. Additional Designations for Temporary Protected Status

Over the course of FY 2022 and FY 2023, the Secretary of Homeland Security, following consideration of relevant country conditions and other appropriate factors and in consultation with interagency partners, designated, redesignated, and extended the designation of several countries for TPS under section 244 of the INA, 8 U.S.C. 1254a. There are currently 16 countries with active TPS designations.<sup>139</sup> TPS provides temporary protection from removal and employment authorization to eligible nationals of designated countries present in the United States.<sup>140</sup> The Secretary may designate a country for TPS if the conditions in a country meet certain statutory criteria, including preventing the country’s nationals from returning safely due to ongoing armed conflict or extraordinary and temporary conditions or rendering the country temporarily unable to handle adequately the return of its nationals due to an environmental disaster that has resulted in a substantial but temporary disruption in living conditions.<sup>141</sup> USCIS is the designated entity within DHS to administer the TPS program.<sup>142</sup>

Once a country is designated, eligible nationals of that country may apply for TPS by filing Form I–821, Application for Temporary Protected Status (TPS application). Applicants may also request an EAD by filing an EAD application with their TPS application, while their TPS application is pending or after their TPS application is approved.<sup>143</sup> TPS-based EADs fall under the A12 (TPS previously granted) and C19 (initial TPS application pending) categories. Individuals granted TPS must re-register for TPS and may apply to renew their EADs as part of any announced re-registration period if the country’s TPS designation is extended

<sup>138</sup> See TFR Modeling Methodology.

<sup>139</sup> For a list of designated countries, see DHS, USCIS, *Temporary Protected Status* (last reviewed/updated Oct. 17, 2024),

<https://www.uscis.gov/humanitarian/temporary-protected-status> (last visited Oct. 23, 2024).

<sup>140</sup> See INA secs. 244(a)(1); 8 U.S.C. 1254a(1).

<sup>141</sup> See INA secs. 244(b)(1)(A)–(C); 8 U.S.C. 1254a(b)(1)(A)–(C).

<sup>142</sup> See 6 U.S.C. 275. See INA sec. 244(a); 8 U.S.C. 1254a(a).

<sup>143</sup> See INA sec. 244(a)(4), 8 U.S.C. 1254a(a)(4); 8 CFR 244.5, 274a.12(c)(19).

by the Secretary pursuant to statutory requirements.<sup>144</sup>

Over the course of FY 2022 and FY 2023, the Secretary newly designated five countries for TPS—Afghanistan,<sup>145</sup> Cameroon,<sup>146</sup> Ethiopia,<sup>147</sup> Sudan,<sup>148</sup> and Ukraine.<sup>149</sup> These initial designations allowed nationals of these countries who were already in the United States to apply for TPS and EADs. During this same period, the Secretary extended and redesignated for TPS Burma,<sup>150</sup> Haiti,<sup>151</sup> Syria,<sup>152</sup> Somalia,<sup>153</sup> South Sudan,<sup>154</sup> and Yemen,<sup>155</sup> which allowed existing TPS beneficiaries to re-register for TPS and apply for renewal of their EADs and allowed additional qualifying nationals who arrived in the United States after the prior designation to apply for TPS EADs. The Secretary also extended the TPS designation for El Salvador,<sup>156</sup> Honduras,<sup>157</sup> Nicaragua,<sup>158</sup> Nepal,<sup>159</sup> and Venezuela,<sup>160</sup> thereby allowing existing TPS beneficiaries to re-register for TPS and apply for renewal of their EADs.

These additional designations, extensions, and redesignations resulted in a significant increase in initial and renewal EAD filings. In FY 2021, USCIS received 148,898 EAD applications filed by TPS applicants. Of these, 24,172 were renewal EAD applications. In FY 2022, USCIS received 100,484 EAD applications filed by TPS applicants. Of these, 33,352 were renewal EAD applications. In FY 2023, USCIS

received 329,325 EAD applications filed by TPS applicants, which represent an over 200 percent increase in TPS-related EAD applications from FY 2022 to FY 2023. Of these, 230,363 were renewal EAD applications as a result of the withdrawal of the TPS terminations and extensions of TPS in that fiscal year.<sup>161</sup> As of January 2024, prior to publication of the 2024 TFR, the Secretary had redesignated and extended TPS for Cameroon<sup>162</sup> and Syria.<sup>163</sup>

The increased number of TPS-based EAD filings (particularly in renewal EAD applications in the A12 category) from FY 2022 to FY 2023 further stretched limited USCIS resources and contributed to the longer processing times for renewal EAD applications overall.

6. Combined Impact on Renewal EAD Application Processing Times

The events described in the previous sections resulted in a significant increase in USCIS processing times for several categories of automatic extension-eligible renewal EAD applications. For the period leading up to the 2024 TFR, the most significant contributing factor to these increased processing was the substantial surge in the number of initial EAD applications based on pending asylum applications (C08) that began in March 2023. This spike in filings, followed by a sustained increase in receipts during FY 2023,<sup>164</sup> substantially increased processing times for renewal EAD applications because USCIS was required to prioritize adjudication of C08 initial EAD

applications to comply with court-ordered deadlines for processing these case types and to address other priorities.

As shown in Tables 6A. through C. below, in FY 2023, USCIS received approximately 3.49 million EAD applications, which was 50 percent higher than the volume received in FY 2022 (approximately 2.33 million). USCIS received approximately 2.37 million initial EAD applications in FY 2023, which was 77 percent higher than the volume of initial EAD applications received in FY 2022 (approximately 1.34 million). USCIS received approximately 1.12 million renewal EAD applications in FY 2023, which was 13 percent higher than the volume received in FY 2022 (approximately 990,000).

TABLE 6A—INITIAL AND RENEWAL EAD APPLICATIONS

Fiscal year	EAD applications	Difference
2022 .....	2,330,000	50 percent higher than 2022.
2023 .....	3,490,000	

TABLE 6B—INITIAL EAD APPLICATIONS

Fiscal year	EAD applications	Difference
2022 .....	1,340,000	77 percent higher than 2022.
2023 .....	2,370,000	

TABLE 6C—RENEWAL EAD APPLICATIONS

Fiscal year	EAD applications	Difference
2022 .....	990,000	13 percent higher than 2022.
2023 .....	1,120,000	

As shown in Figure 1 below, the primary drivers in the growth of EAD applications in FY 2023 (both initials and renewals) were EAD applications based on pending asylum applications (C08), followed by TPS (A12/C19) and parole (C11).

<sup>144</sup> See INA sec. 244(a)(1)(B), 8 U.S.C. 1254a(a)(1)(B); 8 CFR 244.12, 274a.12(a)(12).

<sup>145</sup> 87 FR 30976 (May 20, 2022).

<sup>146</sup> 87 FR 34706 (June 7, 2022).

<sup>147</sup> 87 FR 76074 (Dec. 12, 2022).

<sup>148</sup> 87 FR 23202 (Apr. 19, 2022).

<sup>149</sup> 87 FR 23211 (Apr. 19, 2022).

<sup>150</sup> 87 FR 58515 (Sept. 27, 2022).

<sup>151</sup> 88 FR 5022 (Jan. 26, 2023).

<sup>152</sup> 87 FR 46982 (Aug. 1, 2022).

<sup>153</sup> 88 FR 15434 (Mar. 13, 2023).

<sup>154</sup> 88 FR 60971 (Sept. 6, 2023).

<sup>155</sup> 88 FR 94 (Jan. 3, 2023).

<sup>156</sup> 88 FR 40282 (June 21, 2023).

<sup>157</sup> 88 FR 40304 (June 21, 2023).

<sup>158</sup> 88 FR 40294 (June 21, 2023).

<sup>159</sup> 88 FR 40317 (June 21, 2023).

<sup>160</sup> 87 FR 55024 (Sept. 8, 2022).

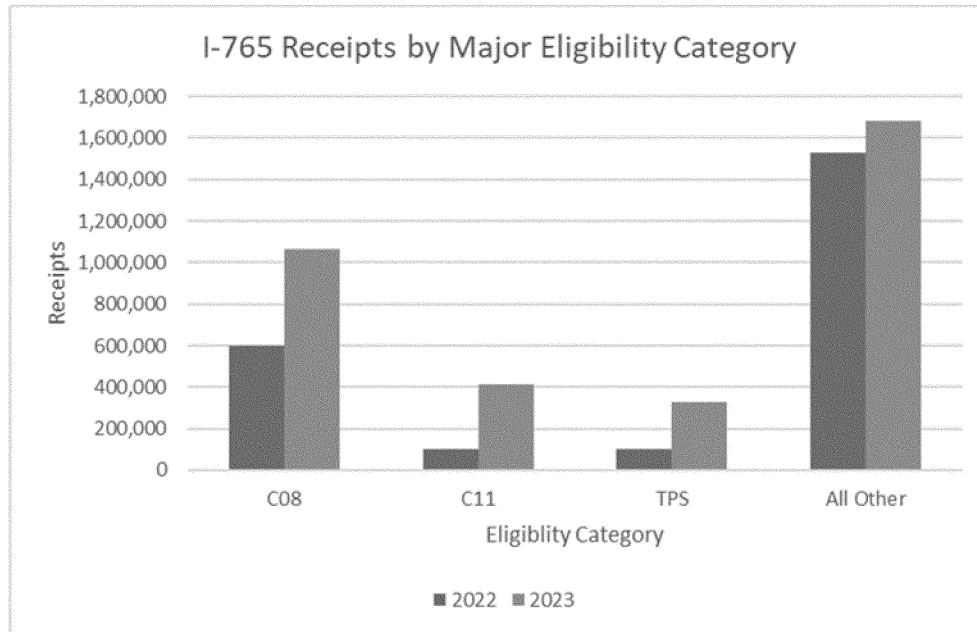
<sup>161</sup> The 6 countries impacted by the withdrawal of TPS Terminations (El Salvador, Haiti, Honduras, Nepal, Sudan, Nicaragua) accounted for approximately 19,000 renewal EAD applications in FY2022 and 193,000 renewal applications in FY2023. Source: USCIS analysis 10/11/2024.

<sup>162</sup> 88 FR 69945 (Oct. 10, 2023).

<sup>163</sup> 89 FR 5562 (Jan 29, 2024).

<sup>164</sup> For the beginning of FY 2023 until March 2023, USCIS averaged 160,000 initial EAD application receipts per month. In March 2023, initial EAD application receipts spiked to over 250,000. For the remainder of FY 2023, USCIS averaged 220,000 initial EAD application receipts per month. The EAD category with the largest growth of initial receipts in the second half of FY 2023 was C08 (pending asylum applications).

**Figure 1. I-765 Receipts by Major Eligibility Category**



Consequently, the efforts USCIS undertook to improve its processing times for renewal EAD applications, including increasing its staffing levels, were insufficient to keep up with the substantial and unanticipated increase in EAD application filings.

By February 2024, prior to the issuance of the 2024 TFR, the 80th percentile processing time<sup>165</sup> for renewal C08 EAD applications was 16 months, well beyond the targeted three-month processing time. By February

2024, USCIS was also behind in its adjudications of other automatic extension categories, including C09 (pending adjustment of status application, 7.5 months), C10 (pending application for suspension of deportation, 16.3 months), A12 (TPS, 11.2 months), A05 (asylee, 4.8 months), and A10 (granted withholding of deportation or removal, 6.6 months).

Table 7 shows that the number of pending EAD applications did not materially improve and, by the end of

February of 2024, was approximately 1.40 million applications, which posed a challenge for USCIS and also impacted processing times for renewal EAD applications eligible for automatic extensions because of the limited amount of USCIS resources that can be allocated to those case types. The total number of pending automatic extension renewal EAD applications at the end of February 2024 was approximately 439,000.

**TABLE 7—PENDING EAD APPLICATIONS BY MONTH**

Month	All EAD applications	Automatic extension renewals
Sep 2023 .....	1,490,000	534,000
Oct 2023 .....	1,510,000	504,000
Nov 2023 .....	1,500,000	474,000
Dec 2023 .....	1,470,000	448,000
Jan 2024 .....	1,440,000	457,000
Feb 2024 .....	1,400,000	439,000

Source: DHS, USCIS, Office of Performance and Quality (OPQ), CLAIMS3, ELIS, retrieved March 15, 2024.

<sup>165</sup> The processing times displayed on the USCIS website is the amount of time it took USCIS to complete 80 percent of adjudicated cases over the last 6 months. “Processing time is defined as the

number of days (or months) that have elapsed between the date USCIS received an application, petition, or request and the date USCIS completed the application, petition, or request (that is,

approved or denied it) in a given six-month period.” See DHS, USCIS, *Case Processing Times*, <https://egov.uscis.gov/processing-times/more-info> (last visited Oct. 23, 2024).



As of February 2024, USCIS had approximately 439,000 pending renewal EAD requests in the categories eligible for automatic extension,<sup>166</sup> and received an average of approximately 52,800 additional automatic extension-eligible renewal EAD applications per month in FY 2023.<sup>167</sup> These additional renewal applications added to the backlog, given that USCIS completed approximately 49,100 automatic extension-eligible renewal EAD applications per month at that time.<sup>168</sup>

In FY 2023, the 80th percentile processing time for all renewal EAD applications was 14.2 months. For those automatic extension-eligible renewal applicants, as of February 2024, the 80th percentile processing time was 14.5 months.

In summary, based on a combination of factors, DHS projected at the time that, between May 2024 to March 2026, approximately 800,000 renewal applicants eligible for an automatic extension would exceed the 180-day automatic extension period unless the 2024 TFR was issued.

### *C. Automatic Extension Period of up to 180 Days in Current 8 CFR 274a.13(d)(1) Is Insufficient*

DHS is aware of the importance of employment authorization and EADs as evidence of employment eligibility for applicants' and their families' livelihoods, as well as their U.S. employers' continuity of operations and financial health. DHS is also aware of the potential detrimental impact that

gaps in employment authorization may have on an applicant's eligibility for future immigration benefits, should the applicant engage in unauthorized employment during the gap,<sup>169</sup> and on the U.S. employer's responsibilities under the INA. DHS also acknowledges that the factors that lead to substantial increases in backlogs and prolonged renewal EAD application processing times are not the fault of applicants but have had and may continue to have significant adverse consequences for applicants and employers awaiting a USCIS decision on pending renewal EAD applications. The public comments received in relation to the 2022 and 2024 TFRs underscore the importance of employment authorization and EADs.<sup>170</sup>

As illustrated by the examples elsewhere in this preamble,<sup>171</sup> a wide variety of often-unpredictable circumstances affecting USCIS operations have led to significant increases in USCIS processing times for several categories of renewal EAD applications. DHS has determined that if the automatic extension period is not permanently increased to 540 days, many EAD renewal applicants could in the future be in danger of experiencing a gap in employment authorization and/or EAD validity. Without a permanent 540-day automatic extension period, one or more events in the future, such as a surge in EAD application filings, may result in hundreds of thousands of renewal EAD applications remaining pending beyond the 180-day automatic extension period, and renewal applicants may lose their employment authorization and/or EAD validity through no fault of their own. DHS has also determined that reacting to such circumstances by providing temporary extensions through the means of TFRs is neither an efficient solution nor is it sustainable for DHS, USCIS, applicants and employers as such rapid policymaking exercises occupy scarce government resources and do not provide long-term stability and predictability for applicants, employers' business operations, and the community as a whole.

As DHS has noted before in previous rulemakings, the loss of employment authorization for asylum applicants is especially dire because of the significant time that asylum applicants must wait

to become employment-authorized in the first place.<sup>172</sup> By statute, asylum applicants cannot be approved for initial EADs until their asylum applications have been pending for at least 180 days.<sup>173</sup> This initial wait time exacerbates the often-precarious economic situations asylum seekers may be in as a result of fleeing persecution in their home countries.<sup>174</sup> Many lacked substantial resources to support themselves before they fled or spent much of what they had to escape their country and travel to the United States.<sup>175</sup> Those with resources may have been forced to leave what they had behind because they lacked the time to sell property or otherwise gather what they owned.<sup>176</sup> When whole families are threatened, the primary earner may be the first to travel to the United States to establish a new home before bringing the rest of the family.<sup>177</sup> The cost to travel to the United States is high, as is the relative cost of living.<sup>178</sup> In these circumstances, if the asylum seeker is unable to work for extended periods of time, it can not only negatively impact that individual, but the whole family as well.<sup>179</sup> For those who have already found jobs to support their needs, the potential for their initial EADs to expire prior to the approval and issuance of a renewed EAD may force them back into instability caused by a gap in their authorization to work.<sup>180</sup>

Continuation of employment authorization and/or EADs is also a requirement for their employers who must comply with Form I-9, Employment Eligibility Verification, requirements in order to continue to employ these employees.<sup>181</sup> In addition, some employers, notwithstanding

<sup>166</sup> See Table 7 (Source: DHS, USCIS, OPQ, CLAIMS3, ELIS, retrieved March 15, 2024). The vast majority of these renewal applicants eligible for automatic extension fell into three filing categories: (1) noncitizens who have properly filed applications for asylum and withholding of deportation or removal (C08); (2) noncitizens who have filed applications for adjustment of status to lawful permanent resident under section 245 of the INA, 8 U.S.C. 1255 (C09); and (3) noncitizens who have filed applications for suspension of deportation under section 244 of the INA (as it existed prior to April 1, 1997), cancellation of removal pursuant to section 240A of the INA, 8 U.S.C. 1229b, or special rule cancellation of removal under section 309(f)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (C10). In FY 2023, these three filing categories made up nearly 61 percent of the renewal EAD receipts filed in categories eligible for the automatic extension of employment authorization. Broken down further among these three categories: the C08 category comprised approximately 41 percent of the renewal EAD receipts filed in categories eligible for the automatic extension, while the C09 category comprised approximately 10 percent and the C10 comprised approximately 10 percent.

<sup>167</sup> In FY 2023, USCIS received a total of approximately 633,000 renewal EAD applications in the categories eligible for automatic extension, which averages to approximately 52,800 filings per month.

<sup>168</sup> See 89 FR 24628, 24644 (Apr. 8, 2024).

<sup>169</sup> With certain exceptions, if a noncitizen continues to engage in or accepts unauthorized employment, the individual may be barred from adjusting status to that of a lawful permanent resident under INA sec. 245. See INA sec. 245(c)(2) and (c)(8), 8 U.S.C. 1255(c)(2) and (c)(8).

<sup>170</sup> See section IV. Discussion of Public Comments, in this preamble.

<sup>171</sup> See sections III. A–C. in this preamble.

<sup>172</sup> See 87 FR 26614, 26619 (May 4, 2022) (explaining that a now-vacated regulation in effect from August 2020 through February 2022 did not allow asylum applicants to apply for employment authorization until their asylum applications had been pending for at least 365 days, and, even absent that regulation, INA 208(d)(2), 8 U.S.C. 1158(d)(2) does not allow their employment authorization applications to be approved until their asylum applications have been pending at least 180 days); 89 FR 24628, 24644 (Apr. 8, 2024) (same explanation).

<sup>173</sup> See INA sec. 208(d)(2), 8 U.S.C. 1158(d)(2).

<sup>174</sup> See 87 FR 26614, 26619 (May 4, 2022); 89 FR 24628, 24644 (Apr. 8, 2024).

<sup>175</sup> See 87 FR 26614, 26619 (May 4, 2022); 89 FR 24628, 24644 (Apr. 8, 2024).

<sup>176</sup> See 87 FR 26614, 26619 (May 4, 2022); 89 FR 24628, 24644 (Apr. 8, 2024).

<sup>177</sup> See 87 FR 26614, 26619 (May 4, 2022); 89 FR 24628, 24644 (Apr. 8, 2024).

<sup>178</sup> See 87 FR 26614, 26619 (May 4, 2022); 89 FR 24628, 24644 (Apr. 8, 2024).

<sup>179</sup> See 87 FR 26614, 26619 (May 4, 2022); 89 FR 24628, 24644 (Apr. 8, 2024).

<sup>180</sup> See 87 FR 26614, 26619 (May 4, 2022); 89 FR 24628, 24644 (Apr. 8, 2024).

<sup>181</sup> See 8 CFR 274a.2(b)(1)(vii).

possible violation of section 274B of the INA, 8 U.S.C. 1324b (governing unfair immigration-related employment practices), may be hesitant to hire asylum seekers in the first place if it appears maintaining their employment will be difficult due to potential lapses in employment authorization.<sup>182</sup>

Continuous employment authorization and documentation during the pendency of an asylum application is vital for asylum seekers in the United States to access housing, food, and other necessities.<sup>183</sup> In addition, asylum seekers may need income from employment to access medical care, mental health services, and other resources, as well as to access legal counsel in order to pursue their claims before USCIS or EOIR.<sup>184</sup> Access to mental health services is particularly crucial for asylum seekers due to the prevalence of trauma-induced mental health concerns, including depression and post-traumatic stress disorder.<sup>185</sup> The physical harm experienced by many asylum seekers frequently necessitates continuous medical care for extended periods of time.<sup>186</sup> Finally, the purpose for which asylum seekers came to the United States is to seek long-term protection by receiving asylum.

In addition, having unexpired employment authorization and EADs is necessary for certain noncitizens such as asylum applicants and TPS beneficiaries when they require proof of identity or immigration status. For example, the only acceptable document available to some noncitizens such as asylum applicants and TPS beneficiaries to establish identity for other purposes, such as obtaining a REAL ID-compliant driver's license or identification card, may be an unexpired EAD.<sup>187</sup> Following full implementation of REAL ID requirements, if an individual chooses to present a state-issued driver's license or identification card for defined official purposes, including access to certain Federal facilities and boarding federally regulated commercial aircraft, the driver's license or identification card must be REAL ID-compliant.<sup>188</sup> Without an unexpired EAD, certain classes of noncitizens would not be able to apply

for REAL ID-compliant driver's licenses or identification cards.<sup>189</sup>

To reduce the chance of the harmful effects caused by such lapses, DHS is permanently amending existing DHS regulations to increase the automatic extension period from up to 180 days to up to 540 days for all eligible renewal EAD application categories under 8 CFR 274a.13(d).

#### IV. Discussion of Public Comments

##### A. Summary of Comments on the 2024 TFR

In promulgating the 2024 TFR, DHS invited the public to participate in the rulemaking by submitting comments and written data on any part of the 2024 TFR. In light of the concern about potential future lapses in employment authorization and/or the validity of their EAD as a result of spikes in application filings and other circumstances that impact USCIS processing of renewal EAD applications, DHS also invited the public to comment on the following three aspects:

- Whether DHS regulations should be revised to permanently lengthen the automatic extension period to up to 540 days for employment authorization and/or EAD validity for eligible renewal applicants;
- Whether a different extension period should be implemented for some or all applicants covered by the automatic extension provision on either a temporary or permanent basis; and
- Whether other solutions should be considered to mitigate the risk of expiring employment authorization and/or EAD validity for some or all applicants covered by automatic extension provisions.<sup>190</sup>

The 2024 TFR provided a 60-day period for the public to submit comments at <http://www.regulations.gov/> using the DHS docket number DHS Docket No. USCIS–2024–0002. In response to the request for comments, DHS received a total of 152 public comment submissions.

Comments were submitted by a range of entities and individuals, including attorneys and legal service providers, applicants, applicant's family members, professional organizations, unions, advocacy groups, international organizations, religious organizations, research and community organizations, and state and local government agencies or elected officials.

<sup>189</sup> 6 CFR 37.11(c)(1) lists the identity documents applicants of REAL ID-compliant driver's licenses and identification cards must provide.

<sup>190</sup> 89 FR at 24648, 24674.

##### B. General Support for the 2024 TFR

*Comment:* Many commenters expressed their support for the 2024 TFR based on the positive impacts and benefits the 2024 TFR would have on noncitizens, their employers, their families, their support systems, their communities, and the public. Many commented on the devastating effects caused by gaps in employment authorization and documentation, including job loss, gaps in driver's license privileges and other professional licensing, and exploitation. Citing research, a commenter wrote that gaps in employment authorization and the concomitant financial instability also leave immigrants vulnerable to labor trafficking and exploitation.

Commenters also stated that allowing applicants to continue to be able to work while waiting for USCIS to adjudicate their renewal EAD applications provided stability and job security for those workers and their families. Other commenters remarked that employment authorization is a critical tool that helps noncitizens successfully integrate into the United States and promotes self-sufficiency. Many commenters stated that noncitizens should not have to fear the loss of employment due to lengthy USCIS processing times.

A commenter pointed out that the ability to work is especially important for marginalized noncitizens. Another commenter wrote that asylum seekers deserve the same right to work as U.S. citizens and expressed support for the longer extension period.

A few commenters noted that the automatic EAD extension would give relief to legal services providers who are already overburdened by high caseloads, time-consuming work related to EAD delays and renewals, and staffing shortages. One commenter stated that gaps in employment authorization due to USCIS processing delays cause applicants relying on pro bono legal services significant distress, which, in turn creates more work for the services' overburdened staff.

A few commenters noted the concerns that having expired employment authorization aggravates the abuse, labor violations, and retaliation that noncitizens already encounter in the workplace, leading these noncitizens to take jobs that are underpaid and present unsafe working conditions. One commenter stated that Black people, indigenous people, and other people of color are particularly susceptible to working in dangerous jobs and the informal economy, leading to more encounters with law enforcement.

<sup>182</sup> See 87 FR 26614, 26619 (May 4, 2022); 89 FR 24628, 24645 (Apr. 8, 2024).

<sup>183</sup> See 87 FR 26614, 26619 (May 4, 2022); 89 FR 24628, 24645 (Apr. 8, 2024).

<sup>184</sup> See 87 FR 26614, 26619 (May 4, 2022); 89 FR 24628, 24645 (Apr. 8, 2024).

<sup>185</sup> See 87 FR 26614, 26619 (May 4, 2022); 89 FR 24628, 24645 (Apr. 8, 2024).

<sup>186</sup> See 87 FR 26614, 26619 (May 4, 2022); 89 FR 24628, 24645 (Apr. 8, 2024).

<sup>187</sup> 6 CFR 37.11(c).

<sup>188</sup> REAL ID Act of 2005, Public Law 109–13, div. B, Title II, Sec. 201(3) (May 11, 2005); 6 CFR Part 37.

One commenter remarked that many workers are disincentivized from reporting labor violations and poor working conditions due to concerns over workplace abuse and retaliation from employers taking advantage of gaps in work authorization, thereby reinforcing the need for timely processing of work authorization and the commenter's support for the rule.

Indicating an understanding of the difficulties that gaps in work authorizations can cause to both foreign-born workers and business operations, a commenter expressed appreciation for USCIS' efforts to improve the harmful impacts of backlogs in the adjudication of EAD applications.

*Response:* As outlined in the 2024 TFR, DHS is aware that an automatic extension period of up to 180 days insufficiently addresses the stresses of the EAD renewal process on applicants, their families, legal services providers, and employers, and takes note of the consequences for these groups when renewal EAD applications are not timely processed. DHS is aware of the many benefits that the DHS TFRs provided to eligible renewal EAD applicants by increasing the automatic extension period to up to 540 days and DHS believes that making the up to 540-day automatic extension permanent is necessary to mitigate against these harms on a long-term basis.

#### C. General Opposition to the 2024 TFR

*Comment:* A commenter expressed opposition to the 2024 TFR, reasoning that, by publishing the rule in the **Federal Register**, DHS did not provide enough transparency for the public because the public does not read the **Federal Register**. The commenter stated that no foreigners should be in the United States. The commenter alleged that the 2024 TFR would allow noncitizens to remain in the United States, during which time they would participate in fraudulent election activities and other criminal activities that according to the commenter they are paid to commit.

*Response:* By law, substantive agency rules of general applicability are published in the **Federal Register**.<sup>191</sup> The **Federal Register** is the official daily publication to notify the public of rules, proposed rules, and notices of Federal agencies and organizations. Therefore, DHS followed the standard method of providing notice of the 2024 TFR and an opportunity to comment. The commenter's remarks about the

potential for noncitizens to engage in unlawful actions are speculative and beyond the scope of this rulemaking, and therefore we will not address them. The purpose of the 2024 TFR was amply laid out in the preamble to that document,<sup>192</sup> and has nothing to do with alleged election fraud or enabling criminal activity.

*Comment:* A commenter indicated that the automatic extension does not help because companies generally will not employ someone with a facially expired EAD.

*Response:* DHS notes that an employer that rejects acceptable documentation for Form I-9, Employment Eligibility Verification, that appears to be genuine and relates to the employee, based on the employee's citizenship status or national origin, may violate the INA's anti-discrimination provision, found in Section 274B of the INA, 8 U.S.C. 1324b.<sup>193</sup> The INA prohibits discrimination against employees and applicants for employment in hiring, firing, and recruitment on the basis of citizenship status or national origin, unfair documentary practices, as well as retaliation for engaging in protected activity, such as filing a complaint based on these prohibited actions.<sup>194</sup> The U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER) enforces the INA's anti-discrimination provision.<sup>195</sup> Employees may seek redress through IER, whose jurisdiction includes investigating claims that valid documentation was rejected during the Form I-9 process based on a worker's citizenship status or national origin. To address concerns that employers will not hire someone with a facially expired EAD, USCIS also has clarified guidance and tools available on its website to help employers understand the requirements for eligibility for extensions of employment authorization and/or EADs.<sup>196</sup>

<sup>192</sup> See, e.g., 89 FR 24628, 24628–29 (Apr. 8, 2024).

<sup>193</sup> DHS, USCIS, *M-274, Handbook for Employers, Section 11.2 Types of Employment Discrimination Prohibited Under the INA* (last reviewed/updated July 25, 2023), <https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/110-unlawful-discrimination-and-penalties-for-prohibited-practices/112-types-of-employment-discrimination-prohibited-under-the-ina> (last visited Oct. 23, 2024).

<sup>194</sup> See 8 U.S.C. 1324b.

<sup>195</sup> See DOJ, Civil Rights Division, *Immigrant and Employee Rights Section*, <https://www.justice.gov/crt/immigrant-and-employee-rights-section> (last visited Oct. 23, 2024).

<sup>196</sup> See DHS, USCIS, *Automatic Employment Authorization Document (EAD) Extension* (last reviewed/updated Oct. 9, 2024), <https://www.uscis.gov/eadautoextend> (last visited Oct. 23,

#### D. Legal Authority

*Comment:* Some commenters noted that DHS was acting within its legal authority when it issued the 2024 TFR. A commenter supporting the 2024 TFR wrote that “adequate reception conditions are a necessary component of fair and efficient asylum procedures,” and that access to work for asylum-seekers and other similarly situated populations is linked to the quality of reception conditions for asylum seekers. A commenter expressed support for the rule and commended DHS for preparing what it called a thorough analysis supporting the legal aspects of the 2024 TFR.

*Response:* DHS agrees that it had ample legal authority to publish the 2024 TFR. DHS's primary goal was to help prevent a lapse in employment authorization and/or documentation for eligible renewal EAD applicants.

#### E. Purpose of the 2024 TFR

*Comment:* Several commenters addressed the purpose of the 2024 TFR. One commenter wrote that DHS is correct in “trying to find a path forward” to process EAD applications and renewals, noting that the current situation seems “dire.” A commenter commended DHS's proactive efforts given the potential uncertainty surrounding the projected 260,000 renewal EAD applicants facing a lapse in employment beginning in October 2025. The same commenter said that the imminent and near-term needs of applicants and their U.S. employers justify the up to 540-day automatic extension period provided by the 2024 TFR to address these needs and expressed the need to develop a longer-term solution after soliciting additional input and thoroughly assessing the effects of USCIS policy and operational changes.

Other commenters noted their support of DHS's efforts to reduce backlogs, decrease processing times, streamline EAD application processing, and increase the maximum validity period to 5 years for certain EAD categories. Another commenter said that such efforts have not only resulted in improvements for EAD recipients, but also for resettlement case workers and legal service program staff who have saved time assisting clients to obtain these vital documents. A commenter indicated that, more broadly, the U.S. government's ongoing efforts around backlog reduction of the asylum backlog would prevent it from growing further, which, in turn, would reduce the need

(2024) (including the Automatic Extension Eligibility Calculator tab).

<sup>191</sup> See 5 U.S.C. 552, 553; see also 44 U.S.C. Chapter 15 (**Federal Register** and Code of Federal Regulations).

for asylum seekers to renew EAD applications and will help mitigate the risks that those who are eligible for employment authorization and documentation face lapses in access. Another commenter remarked that DHS's efforts to decrease processing times generally and facilitate the EAD application process would alleviate burdens for migrant workers and their families.

A commenter wrote that ensuring the right to work in fair conditions is enshrined in both international law and U.S. labor law, that a person is to be protected from labor violations and labor trafficking regardless of immigration status, and that the Refugee Convention framework calls upon the United States to guarantee labor protections to refugees and asylum seekers. The commenter asserted that the current employment authorization framework, with short authorization periods that lapse without adequate infrastructure to timely process renewals, violates these laws and that the U.S. government would benefit from an up to 540-day extension or longer as it retains the authority to withdraw an authorization should a benefit be denied or revoked. The commenter wrote that gaps in employment authorization undermine the United States' fulfillment of Article 24(1) of the 1951 Refugee Convention, and do not conform with the standards set forth in Article 6(1) of the International Covenant on Economic, Social and Cultural Rights, which urges states to "recognize the right to work[.]"<sup>197</sup>

Another commenter added that DHS's efforts to ensure continued access to work authorization and documentation for refugees and asylum seekers as reflected in the 2024 TFR are consistent with international human rights and refugee law. Similarly, one commenter wrote that asylum seekers account for about 80 percent of the 800,000 work permit renewal applicants who might lose work authorization without the benefit of the 2024 TFR.

Some commenters wrote that the backlog in processing EAD applications was not the workers' fault. While referencing an article in which a USCIS spokesperson was cited, a commenter wrote that preventing noncitizens from losing their work authorization would align with USCIS' priorities of preventing work authorizations for noncitizens from expiring through no fault of their own.

*Response:* DHS agrees with those commenters who point out that the needs of EAD renewal applicants can be urgent and that addressing the imminent expiration of EADs for affected individuals is a critical priority. DHS also agrees with those commenters who note that workers with EADs are not at fault for the backlog. Correspondingly, DHS is issuing this final rule to address these concerns long-term and to prevent gaps in employment authorization for eligible renewal EAD applicants.

DHS disagrees with the commenter's assertion that the current employment authorization scheme violates or is inconsistent with U.S. obligations under international law and specifically the 1951 Refugee Convention. Although the United States is a party to the 1967 Protocol, which incorporates Articles 2 to 34 of the 1951 Refugee Convention, this treaty is not self-executing; consequently, it is not directly enforceable in U.S. law. It is the domestic implementing law that governs, and Supreme Court and other case law makes clear that the Protocol serves only as a useful guide in determining congressional intent in enacting the Refugee Act of 1980 because the Act sought to bring U.S. law into conformity with the Protocol. *See, e.g., INS v. Stevic*, 467 U.S. 407, 428 n.22 (1984); *Khan v. Holder*, 584 F.3d 773, 783 (9th Cir. 2009).

Congress implemented U.S. obligations with respect to certain provisions of the Refugee Convention in the Refugee Act of 1980. The Refugee Act, in particular, included provisions implementing Article 34 of the 1951 Convention, which provides that State Parties "shall as far as possible facilitate the assimilation and naturalization of refugees." Congress implemented Article 34 primarily through the INA's discretionary asylum and asylee and refugee adjustment of status provisions at sections 208 and 209 of the INA, 8 U.S.C. 1158, 1159. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 441 (1987). As the Supreme Court has recognized, Article 34 is "precatory" and "does not require [an] implementing authority actually to grant asylum to all" noncitizens determined to meet the definition of a refugee. *Id.*

DHS also notes that the INA provisions and DHS regulations applicable to refugees and asylees fully comply with U.S. obligations under Articles 17 and 31 of the Refugee Convention, as incorporated in the 1967 Protocol. Note that paragraphs (1) and (3) of Article 17 related to wage-earning employment state that "The Contracting State shall accord to refugees lawfully

staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards to engage in wage-earning employment," and that "The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regard to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes."

Even if Article 17 imposes any binding obligations, nothing in Article 17 requires DHS to provide employment authorization to noncitizens seeking refugee status or asylum *before* DHS or an IJ has made a final determination that they meet the definition of a refugee under 101(a)(42) of the INA, 8 U.S.C. 1101(a)(42), and grant the individual's application on that basis. Under the INA, DHS is not required to provide work authorization for asylum applicants, but DHS generally does so pursuant to its discretion. *See* INA section 208(d)(2), 8 U.S.C. 1158(d)(2); 8 CFR 208.7, 274a.12(c)(8). Once DHS or an IJ has determined that a noncitizen meets the definition of a refugee and has been granted status, the noncitizen is immediately authorized to work pursuant to their status, consistent with the statute and regulations governing employment authorization for those who have been granted refugee status or asylum. *See* INA 208(c)(1)(B), 8 U.S.C. 1158(c)(1)(B); 8 U.S.C. 1738; 8 CFR 274a.12(a)(3), (a)(5).

DHS also believes that the employment authorization framework and this rule comply with U.S. obligations under Article 31.1 of the Refugee Convention, which also is non-self-executing. *See* Refugee Convention, Article 31.1 ("[C]ontracting States shall not impose penalties, on account of their illegally entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened . . . enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence."). DHS is not imposing a penalty on refugees who entered the United States without authorization or are unlawfully present.

DHS, however, acknowledges that the up-to-180-day automatic extension can lead to gaps in employment authorization owing to operational considerations, and a permanent 540-day automatic extension will better protect against disruptions to EAD applicants, their families, and their

<sup>197</sup> The United States has not ratified the International Covenant on Economic, Social and Cultural Rights.

employers. DHS also acknowledges the fact that asylum applicants are one of the principal populations affected by the extension provided by the 2024 TFR, and that the processing time for asylum applications is an important consideration in the development of EAD renewal policies.

DHS also agrees with commenters' observations that DHS has made important efforts to reduce processing times generally; such reductions in processing times benefit all EAD applicants.

#### F. Positive Impacts of the 2024 TFR

*Comment:* Multiple commenters supported the 2024 TFR, stating that longer EAD automatic extensions would, as estimated by DHS in the 2024 TFR, prevent over 800,000 noncitizens from losing their employment authorization and, as a result, losing their jobs. Numerous commenters stated that the increased temporary EAD automatic extension period would provide stability to noncitizens and allow them to continue supporting themselves and their families while awaiting a decision on their renewal EAD applications. One commenter stated that they frequently hear complaints from Oregon's immigrant community that current employment authorization renewals were extremely onerous for immigrants and their employers, and this immigrant community had reported pushback from employers while periodically seeking to renew their EADs. According to this commenter, some within this community had to take unpaid leave while waiting for their reextended EADs to arrive due to USCIS processing delays. This commenter indicated that immigrant households often having little or no available safety net when these individuals lose their ability to work for extended periods of time due to USCIS processing delays. According to the commenter, the 2024 TFR, while not solving the problem, would give the Oregon immigrant community members more job security, enabling them to provide for their families, and bolster Oregon's economy.

A commenter wrote that the U.S. labor and employment laws generally protect all employees regardless of their immigration status. The commenter stated that Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the grounds of race, color, religion, sex or national origin, and that noncitizen employees may also bring claims for violations of wage and hour protections, occupational health and safety violations, and more. The commenter stated that the 2024 TFR

would provide further protections for noncitizen employees who are vulnerable to labor violations and mistreatment.

Another commenter said that refugees, TPS holders, asylum seekers, and immigrants with pending green card applications or withholding of removal need the protection afforded by the 2024 TFR in order to be productive members of society. A commenter remarked that employment authorization is a critical tool that helps noncitizens in its state successfully integrate into the United States.

Other commenters reasoned that a permanent increase would benefit the U.S. Government, service providers, employers, and workers thanks to less paperwork, more continuity and stability in business staffing, increased worker productivity, and family stability. Another commenter said that a permanent extension would augment its own efforts to place employment-authorized individuals into the workforce by ensuring that those individuals can retain employment authorization.

A commenter addressed the stress and time demands required of its clients to maintain vigilance and valid EADs despite ongoing delays in processing and EAD expirations, stating that increasing the automatic renewal period from 180 to 540 days would reduce harmful delays. The commenter also noted that due to long USCIS processing times, even applicants who apply for a renewal EAD 180 days prior to expiration of their current EAD are at risk of losing work authorization, and that the 2024 TFR's extensions are necessary due to the lengthy processing times.

Some commenters wrote that asylum seekers are fleeing persecution and poverty in their home countries and lapses in work authorization contribute to instability and create anxieties for this population. Similarly, some commenters wrote that survivors of gender-based violence are particularly vulnerable and need timely access to employment authorization and economic opportunities.

Some commenters reasoned that delays in adjudicating asylum applications add to the total delays in work authorization for many noncitizens. A commenter addressed the long affirmative asylum backlog, writing that some of their LGBTQ+ immigrant clients wait years to receive decisions and that the automatic extension increase would benefit clients who otherwise might lose employment, health insurance, and housing and may experience food insecurity.

Several commenters expressed support for the 2024 TFR on the grounds that it would help individuals to maintain their licenses for work, such as truck drivers, ride-share drivers, and delivery service workers. These commenters also described the utility of EADs as a form of recognized identification, including for government interactions or travel, writing that such documentation is particularly needed for noncitizens who may no longer have access to passports or foreign birth certificates.

Some commenters opined that the automatic extensions are beneficial, but that USCIS should do more, with one commenter characterizing automatic extensions as merely "a band-aid solution for a larger problem."

*Response:* DHS believes that the positive impact of the 2022 and the 2024 TFR demonstrates the value in having longer automatic extension periods. This final rule provides a long-term solution that should result in more continuous employment authorization and/or EAD validity that is more efficient for USCIS to administer and more predictable for renewal EAD applicants and their employers. DHS believes that it will provide stability and protection to renewal EAD applicants who are already authorized to work, as well as their families, their employers, the U.S. economy, and the public at large. Stability and predictability are particularly important given the vital role of the EAD that serves not only employment eligibility verification purposes, but also other purposes such as identity and immigration status verification for eligible public benefits and services.

#### G. Impacts on U.S. Employers and the Economy

##### 1. Provide Stability and Decrease Burdens for U.S. Employers

*Comment:* Multiple commenters said that the 2024 TFR and the increased automatic extension period would provide stability for employers, such as by relieving businesses from the impacts of losing or changing employees and associated hiring and training costs. Another commenter wrote that U.S. employers would benefit from smoother operations with more continuity and stability in staffing and that this benefit to businesses would support overall U.S. economic growth. Commenters, citing the 2024 TFR, also stated that the rule would protect up to 82,000 employers and that businesses and organizations would incur approximately \$17.4 billion in labor

turnover costs if EAD recipients were to lose their work authorizations.

*Response:* DHS acknowledges the 2024 TFR's benefits for U.S. employers and, by extension, the U.S. economy. As discussed in the 2024 TFR, the potential effects of widespread lapses of EADs and employment authorization on U.S. employers were a significant reason for issuing the rule.<sup>198</sup>

*Comment:* Some commenters remarked that the 2024 TFR would lessen the paperwork demands of repeated EAD renewals for U.S. employers, with one commenter stating that employers, due to high employee turnover on account of expiring work authorizations, find themselves scrambling to verify new-employee employment authorization or determine when reverification needs to occur, all while operating under the risk of civil monetary penalties if they do not properly maintain employment paperwork.

Some commenters further wrote that the 2024 TFR and a permanent increase of the automatic extension period would increase worker morale and productivity by keeping workloads consistent.

*Response:* DHS acknowledges these positive effects of the 2024 TFR on employers and their workforce.

## 2. Contributions to Local, State, and U.S. Economy

*Comment:* Several commenters wrote in support that the 2024 TFR would benefit the U.S. economy, as worker retention and reduced turnover would stabilize the labor market. Referencing research, another commenter similarly stated that immigrants make significantly more economic contributions to the U.S. economy than they take away from State benefits or other State programs.

Commenters described programs in states and cities that connect arriving noncitizens with immigration legal services, including employment authorization assistance. These commenters described the economic benefits the immigrant population provide to their regions and the critical role that continuous access to EADs plays in supporting immigrant workers.

Expressing support for the 2024 TFR, a few commenters remarked that allowing noncitizens to work in legal ways and pay taxes benefits the U.S. economy. One commenter further reasoned that the 2024 TFR is beneficial because when noncitizens are able to work, they provide additional tax funding for public expenditures such as

social services, education, infrastructure, and national security.

*Response:* DHS agrees that the 2024 TFR has had positive economic effects.

## 3. Alleviate Shortages in the U.S. Labor Market

*Comment:* Several commenters stated that the 2024 TFR would allow noncitizens to be a steady work force to fill jobs in needed fields, such as agriculture, construction, and health care, service industries, and warehouses. Commenters stated that employers and business leaders continually express that immigrant workers are essential to the U.S. economy, and that successful organizations consider the immigration system a resource for positions that are hard to fill, for seasonal or temporary workers, and for enriching their workforce with new cultures and ideas.

Similarly, commenters described shortages within the U.S. labor market and expressed support for the TFR to address those shortages. Referencing research, commenters stated that the U.S. labor market has both acute and chronic labor shortages and that increased levels of migration into the U.S. addresses declines in the U.S. labor force due to the aging population. One commenting organization recommended that USCIS implement administrative policies that aid businesses with work permit-related processes.

*Response:* DHS agrees that noncitizens contribute significantly to the U.S. economy and that the 2024 TFR and this rule help ensure that such contributions are not interrupted because of USCIS processing delays.

## H. Impacts on the U.S. Government

*Comment:* Commenters wrote that the 540-day extension established in the TFR would benefit USCIS by relieving the pressure of the backlog. Some noted that the current automatic 180-day EAD work extension is insufficient, as USCIS often takes more than 1 year to process an application, and they supported the extension so that USCIS would have more time to process applications.

Commenters reasoned that the TFR would reduce the need for EAD renewal processing and thus would reduce USCIS resource challenges, allowing the agency to better allocate its staff time. Similarly, a commenter stated that the automatic extension of EADs would allow USCIS to focus resources on case-based analysis in areas other than EAD renewals.

Several commenters stated that the TFR would benefit DHS by providing more time to consider long-term solutions suggested in public comments,

evaluate policies and operations, and identify new strategies to improve review of EAD applications.

*Response:* While DHS continues to emphasize adjudication of pending EAD renewals, DHS acknowledges these comments and notes that these positive effects on the U.S. government were among the reasons for the 2024 TFR.<sup>199</sup>

## I. Allow a Second 540-Day Automatic Extension Period for Noncitizens who Received the 2022 TFR Automatic Extension

*Comment:* A commenter stated that the TFR appears to exclude applicants who already received an automatic extension through the 2022 TFR.<sup>200</sup> The commenter said that applicants who applied in 2022 and are nearing the end of their previous extension could be ineligible for this new extension despite meeting all other criteria and still having a pending application due to processing delays. The commenter inquired about a solution to ensure that those described applicants could be eligible for the new extension.

*Response:* While DHS is committed to preventing gaps in employment authorization and/or EAD validity in the future for applicants, as of June 30, 2024, about 150, or 0.06 percent, of pending renewal EAD applications had been pending beyond the end of the 540 day automatic extension period provided in the 2022 TFR, which signals that a second automatic extension period would have a marginal benefit at best.<sup>201</sup> Based on a July 2024 analysis, USCIS projects that upwards of 46,000 renewal applicants may lose at least 1 day of employment authorization and/or documentation between July 2024 and March 2027. This population includes approximately 21,000 noncitizens who filed renewal EAD applications covered by the 2022 TFR. These 21,000 expirations would occur between July 2024 and September 2025, with most expirations occurring after January 2025. The timing of these projected expirations will allow USCIS time to address these cases. USCIS has taken operational steps, such as training more officers to adjudicate C10 renewal EAD applications, to further reduce the number of EAD renewal applicants who may lose at least 1 day of employment

<sup>199</sup> 89 FR 24628, 24648 (Apr. 8, 2024).

<sup>200</sup> See 89 FR 24628, 24649 (April 8/2024). See 87 FR 26614 (May 4, 2022).

<sup>201</sup> See DHS, USCIS, OPQ, *I-765 Application for Employment Authorization Automatic Extension Eligible Renewals Pending Beyond 540 Day Automatic Extension Pending as of June 30, 2024*, CLAIMS 3 & ELIS, queried 08/2024 (showing that as of June 30, 2024, out of approximately 260,000 pending renewal EAD applications, under 150 were pending for more than 540 days after expiration).

<sup>198</sup> See 89 FR 24628, 24652, 24656 (Apr. 8, 2024).

authorization and/or documentation. Therefore, DHS declines to adopt a second extension period for those individuals who were covered by the 2022 TFR.

*J. Make Permanent and Extend the Temporary Automatic Extension Period Beyond 540 Days*

1. Permanent Increase to the Automatic Extension Period

*Comment:* Many commenters endorsed a permanent increase to the automatic extension period. Commenters remarked that without a permanent increase, those who do not fall into up-to-5-year EAD categories are likely to experience lapses in employment starting in April 2026.

*Response:* As explained in the 2024 TFR,<sup>202</sup> the up to 180-day automatic extension period applies only to EAD renewals based on an employment authorization category that does not require the adjudication of an underlying application or petition before the adjudication of the renewal application.<sup>203</sup> For the reasons explained in Part III.C of this preamble, however, DHS does support making the up to 540-day automatic extension period permanent, and is implementing this change in this rulemaking.

i. Increase Necessary To Address Processing Backlogs

*Comment:* Many commenters indicated that it is unlikely USCIS can eliminate the processing backlog within the next 2 years, and that DHS should thus make the 540-day automatic extension period a permanent inclusion in the regulations. These commenters argued that this would provide stability to immigrant workers and employers past the rule's implementation period. Commenters said that the recurrent use of temporary rulemaking to increase the automatic extension period signals the need for more permanent solutions to meet current and future needs. One commenter said that the uncertainty generated by successive temporary fixes harms workers by allowing employer misconduct and creating worker anxiety. Similarly, another commenter stated that waiting to issue another rule with another extension, which would then be subject to another notice-and-comment period, would fail to protect against subsequent processing delays. Commenters also added that the current delays in processing and the ongoing need for expanded validity periods are unlikely to change, thereby weighing in favor of a permanent increase to the

automatic extension period, but that DHS could in a future rulemaking end such a permanent increase if processing times improve. A commenter said that a permanent extension would save taxpayer dollars by reducing labor costs and overtime hours.

*Response:* DHS agrees that the automatic extension should be made permanent and is making the up to 540-day automatic extension period permanent with this final rule.

ii. Benefit to USCIS

*Comment:* While supporting DHS's efforts to address existing backlogs, a commenter stated that the measures in place would not meaningfully reduce backlogs enough to account for the unprecedented rise in global displacement and increased migration. Other commenters indicated that a permanent extension would provide USCIS the opportunity to reallocate resources and continue to process backlogs more efficiently and result in less negative feedback and communication, particularly because past automatic EAD extensions have been successful. A commenter indicated that previous up-to 540-day automatic extensions coincided with significant improvements in EAD processing times, without undermining the integrity of the immigration system.

*Response:* DHS agrees that the automatic extension should be made permanent and is making the up to 540-day automatic extension period permanent in this rulemaking.

iii. Benefit to Workers

*Comment:* Many commenters remarked on the potential benefits of a permanent extension for workers, their families, and communities, including long-term predictability and reduced anxiety around job stability. Some commenters stated that a permanent extension of the automatic extension period would ease burdens on non-governmental organizations and community partners, because the individuals would have more clear pathways to self-sufficiency with stable work. Other commenters said that a permanent extension would help workers continue to provide for their families, while simultaneously addressing labor shortages and strengthening the economy. Some commenters referenced numerous examples of individuals who have been affected by EAD renewal delays and the significant hardships they have faced as a result.

Commenters also stated that noncitizens in the workforce are particularly vulnerable to workplace

harassment, exploitation, and violence, which would be worsened by gaps in employment authorization. One of these commenters said that without a permanent 540-day automatic extension in place, affected workers may be unwilling to report labor violations if their statuses lapse because of the fear of retaliation or deportation. Another commenter said that making the change permanent would protect against radical shifts in policy in the event of a new presidential administration, which could otherwise affect the continuity of EADs.

*Response:* DHS agrees that the increased automatic extension period of up to 540-days should be made permanent. For the reasons explained in this rulemaking, DHS is making the up to 540-day automatic extension period permanent in this rulemaking.

iv. Benefit to Employers

*Comment:* Some commenters said that a permanent increase of the automatic extension period to up to 540 days would enhance workforce stability for employers, prevent disruptions, and limit the resource intensive task of finding workers to replace those lost because of administrative barriers.

Other commenters added that a permanent extension would simplify and clarify oversight for employers. One commenter remarked that the current Form I-9, Employment Eligibility Verification, process is confusing for employers and would only become more confusing with repeated temporary rulemakings, because with each subsequent temporary rule, a new temporary period would be added to 8 CFR 274a.13(d), as was done for each of the first two TFRs. The commenter argued that this constant updating and adding of provisions is confusing for employers, workers, and the general public. Others said that a permanent increase of the automatic extension period would maintain the continuity of business operations, ensure that employers would not inadvertently allow workers to work with lapsed authorizations, and, citing reports on the impacts of lapses in work authorization on employers, afford increased security and clarity to the business community.

A commenter said that employers would benefit from the increased stability a permanent extension would provide, because since 2021, employers have regularly lost critical workers due to processing delays. Another commenter urged USCIS to limit disruptions to employment and make working with legal authorization more accessible and easily attainable.

<sup>202</sup> See 89 FR 24628, 24632 (Apr. 8, 2024).

<sup>203</sup> See 8 CFR 274a.13(d).

*Response:* DHS agrees that the automatic extension period of up to 540 days should be made permanent. For the reasons explained in this rulemaking, DHS is making the automatic extension permanent in this rulemaking.

## 2. Increase the Automatic Extension Period to 730 Days

*Comment:* Multiple commenters requested that DHS implement a 730-day automatic extension period instead of another 540-day extension period. One commenter making this request mentioned a 720-day period, but did not distinguish this from a 730-day period. A commenter stated that DHS's goal of addressing near-term needs would still be met by a 730-day extension period, and that a longer period would ameliorate the anxieties experienced by workers, itself a significant near-term need.

A commenter said that during the last 540-day automatic extension period under the 2022 TFR, the commenter represented individuals who properly, timely filed their EAD renewals and did not have their EAD applications adjudicated within 540 days. The commenter stated that there would be no downside in offering a longer extension period, only significant benefits. Another commenter said that increasing the automatic extension period to 730 days would preserve and enhance immigrant workers' contributions through increased taxes, productivity, and entrepreneurship, as well as provide more stability for businesses at risk of losing employees and strengthen hiring prospects for immigrants of color whose uncertain legal status may otherwise jeopardize their job options.

Many commenters reasoned that a 730-day extension would be particularly important because, under the 540-day extension of the 2024 TFR, hundreds of thousands of individuals would still be susceptible to a lapse in employment authorization, which could be harmful for workers and businesses alike. A commenter said that, while there may be operational challenges involved with a 730-day extension, the benefits would outweigh the burdens, which could be mitigated through educational materials to reduce confusion and by specifying that (a)(12) and (c)(19) EAD categories would remain at 540 days. Another commenter echoed this view, stating that although employers have adequately handled changes to validity dates before, the agency could minimize employer confusion by taking reasonable steps to keep them informed.

Other commenters specified that DHS should provide a 730-day work permit extension to all eligible applicants, including those who previously received a 540-day extension under the 2022 TFR. The commenters said this approach would clarify guidance for employers while ensuring that immigrant workers do not fall out of the workforce due to processing delays. A few commenters wrote that because noncitizens are integral to the workplace, industries and the larger economy would be hurt by a lapse in work authorizations.

A commenter remarked that a 540-day or 730-day automatic extension would help individuals maintain stable housing and access to healthcare and childcare, which would ultimately improve mental well-being and reduce trauma. Similarly, a commenter said that a 730-day extension would better protect noncitizens who are already navigating complex asylum procedures and processing significant trauma while caring for their families. A commenter said that organizations working on behalf of noncitizens experiencing processing delays would also benefit, thereby allowing legal service providers to focus on long-term stability options for clients.

A commenter expressed concerns that a 540-day extension would still, as estimated by DHS in the 2024 TFR, leave 260,000 EAD renewal applicants unprotected, which would cause those applicants to lose their drivers' and professional licenses and other critical benefits and would significantly harm the workers, their families, their communities, and the national economy at large. Further, the commenter said that leaving hundreds of thousands of workers with lapses in work authorization would leave them more susceptible to turning to the informal labor market, where the already-vulnerable workers may face poor working conditions, harassment, and exploitation.

A legal services provider agreed with DHS that different automatic extension periods for separate groups would be confusing for noncitizens and employers alike, and therefore expressed support for a single automatic extension length of 730 days.

A commenter stated that neither USCIS nor the Federal Government would be negatively impacted by extending the automatic extension period to up to 730 days. Another commenter expressed support for the steps that USCIS already took to address the backlog but urged USCIS to be realistic in its analysis of current needs so that renewal applicants do not bear

the burden of uncertainty. A commenter noted that the longer automatic extension period would allow USCIS to focus its resources on adjudicating initial EAD applications, thereby reducing USCIS' workload. Similarly, a couple of commenters said that USCIS would benefit from a 730-day automatic extension period, adding that it would eliminate unnecessary administrative burdens.

*Response:* DHS declines to adopt an automatic extension period longer than the current up to 540-day period. As noted in the 2024 TFR,<sup>204</sup> an automatic extension period longer than 540 days could lead to additional confusion and work for employers. By statute, TPS is designated for no more than 18 months which is about 540 days, and the associated employment authorization and EAD are limited to the same period as the designation.<sup>205</sup> The length of the automatic EAD extension period thus aligns with the maximum incremental period of the TPS. If USCIS were to create an automatic extension period longer than 540 days, it would have to also create a separate automatic extension period for TPS-based EAD renewal applicants.<sup>206</sup> This could lead to confusion for employers complying with Form I-9, Employment Eligibility Verification, requirements as employers would have to maintain separate tracking systems for their employees in different EAD categories. Also, as noted in the 2024 TFR,<sup>207</sup> longer automatic extension periods increase the likelihood that an employer might unwittingly continue to employ a worker whose employment authorization is in fact no longer valid, because the likelihood of an adjudication, with the possibility of denial, increases as the period is lengthened.<sup>208</sup> The up to 540-day automatic extension period offers a clear and uniform approach that employers are already familiar with, avoiding unnecessary complexities and the risk that this final rule will result in

<sup>204</sup> See 89 FR 24628, 24647 (Apr. 8, 2024).

<sup>205</sup> See INA secs. 244(a)(2), (b)(2), (d), 8 U.S.C. 1254a(a)(2), (b)(2), (d); 8 CFR 244.12.

<sup>206</sup> Although the duration of TPS designations and redesignations is at the Secretary of Homeland Security's discretion, 18 month periods are the historical norm. This final rule, however, does not create an entitlement to an automatic extension that exceeds the period of a TPS designation.

<sup>207</sup> See 89 FR 24628, 24648 (Apr. 8, 2024).

<sup>208</sup> As explained in detail in the 2024 TFR, because employers may face civil money penalties if they do not properly maintain employment eligibility verification paperwork, or employ a noncitizen without employment authorization, the risk stemming from a mistake stemming from different automatic extension periods is not insignificant. See 80 FR 24628, 24648 (Apr. 8, 2024).



confusion. In addition, DHS also noted in the 2024 TFR that because employers are assessing the applicability of the automatic extension based in part on a non-secure document (such as Form I-797C, Notice of Action, which is printed on plain paper), the preference of DHS is for shorter validity periods for temporary, non-secure documents.<sup>209</sup>

As indicated in the 2024 TFR, the up to 540-day automatic extension period also appears to be an appropriate increase that has been sufficient for the majority of applicants to avert gaps in employment authorizations and/or EAD validity and is better reflective of processing times since the 2022 TFR was published.<sup>210</sup> As one example, as of June 30, 2024, about 150, or 0.06 percent, of pending renewal applications had been pending beyond the 540-day automatic extension period. Therefore, DHS does not believe a longer period is needed.<sup>211</sup> Based on a July 2024 analysis, USCIS projects that 46,000 renewal applicants may lose at least 1 day of employment authorization and/or documentation between July 2024 and March 2027. This population includes approximately 21,000 renewal EAD applications filed during the period covered by the 2022 TFR. These 21,000 expirations would occur between July 2024 and September 2025, with most expirations occurring after January 2025. The timing of these projected expirations will allow USCIS time to make operational changes to address these cases, such as continuing to build on and improve automation to reduce the manual resources needed to complete adjudications.

As commenters noted, in the analysis for the 2024 TFR, DHS projected that approximately 260,000 renewal EAD applicants may lose at least 1 day of employment authorization and/or documentation despite the 540-day automatic extension period. This projection was based on the conditions in place at the time of the analysis in late 2023. That projection therefore could not take into account the complete effect of operational and policy changes described in the TFR, combined with any future changes and operational shifts (such as hiring additional officers or implementing technological improvements for

processing efficiency). However, a July 2024 analysis that considers changes made through June 30, 2024, yields a projection that approximately 46,000 renewal EAD applicants may lose at least 1 day of employment authorization under the 2022 and 2024 TFRs, between and including July 2024 and March 2027.<sup>212</sup> This population is primarily comprised of renewal applicants in the C10 EAD category (Suspension of Deportation/Cancelation of Removal). There are multiple reasons for the change in this estimate, which are specific to each EAD classification. These reasons include: recent changes in filing patterns (such as the asylee A05 category filing their EAD renewal request earlier with respect to their previous EAD expiration data, allowing USCIS more time to adjudicate these renewal applications before expiration), an increased number of C08 renewal EAD application adjudications (in FY 2023, USCIS averaged 31,700 C08 adjudications per month, while in the first 9 months of FY 2024, USCIS increased C08 adjudications by 17.6% to 37,300 per month), a reduction in C09 renewal EAD application receipts (partially due to improvements in the Form I-485 processing times), and other increased efficiencies. In addition, USCIS has taken operational steps, such as training more officers to adjudicate C10 renewal EAD applications, to further reduce the number of EAD renewal applicants who may lose at least 1 day of employment authorization and/or documentation. The substantial reduction in potential lapses supports DHS's conclusion that up to 540 days is a sufficient automatic extension period.

Finally, multiple automatic extension periods also make it more difficult for USCIS to ensure the accuracy of responses for SAVE<sup>213</sup> and E-Verify,<sup>214</sup> programs that USCIS manages that verify immigration status and naturalized/acquired U.S. citizenship, and confirm employment eligibility, respectively. SAVE and E-Verify rely on information from the record source

<sup>212</sup> See Administrative Record, *Auto Extension Analysis—July 2024*.

<sup>213</sup> SAVE is an electronic service that USCIS administers for registered Federal, state, territorial, tribal, and local government agencies to verify immigration status and naturalized/derived U.S. citizenship of applicants seeking benefits or licenses. See DHS, USCIS, *SAVE*, <https://www.uscis.gov/save> (last visited Oct. 23, 2024).

<sup>214</sup> USCIS administers E-Verify, a voluntary program authorized by Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104-208, 110 Stat. 3009, as amended (8 U.S.C. 1324a note) that allows enrolled employers to electronically confirm the employment eligibility of their new employees. See <https://www.e-verify.gov/>.

systems, and multiple automatic extension periods would require additional enhancements to DHS's record source systems to ensure accurate information is provided to registered benefit granting agencies and employers through SAVE and E-Verify, respectively. The implementation of multiple automatic extension periods that vary depending on the category of applicant would take USCIS information technology resources away from other high priority projects to include online filing, transitioning to person-centric case management from form-centric case management, and backlog reduction projects.

*Comment:* A commenter disagreed with the suggestion that a 540-day extension would fall more squarely within the "good cause" rulemaking exception than a longer automatic extension period. The commenter asserted that 730 days would have also been a limited measure and appropriately tailored to address the imminent lapses. The commenter urged DHS to adopt a longer automatic extension period of 730 days in the final rule. Another commenter also said that a 730-day extension would be better than a 540-day extension, but argued that DHS could extend EADs even further, to 48 months, similar to the conditional lawful permanent resident (LPR) extensions following from the submission of Form I-751.<sup>215</sup> The commenter stated that those extensions, which help to protect the LPRs who are prevented from obtaining ID cards or certain benefits because they lack documents from DHS, could be similarly applied to the equally meritorious noncitizens awaiting EADs.

*Response:* By limiting the automatic extension to up to 540 days as the minimum period necessary to avert the imminent near-term harm while USCIS was working to improve processing time and seeking comments on the TFR, DHS did not intend to imply or suggest that an up to 540-day extension would fall more squarely within the APA good cause exceptions at 5 U.S.C. 553(b)(B) and (d)(3) than an up to 730-day automatic extension period.<sup>216</sup> Rather,

<sup>215</sup> In 2023, USCIS extended the validity of Permanent Resident Cards (also known as Green Cards) for petitioners who properly file Form I-751, Petition to Remove Conditions on Residence, or Form I-829, Petition by Investor to Remove Conditions on Permanent Resident Status for 48 months beyond the card's expiration date. See DHS, USCIS, *USCIS Extends Green Card Validity for Conditional Permanent Residents with a Pending Form I-751 or Form I-829*, <https://www.uscis.gov/newsroom/alerts/uscis-extends-green-card-validity-for-conditional-permanent-residents-with-a-pending-form-i-751-or> (last visited Aug. 16, 2024).

<sup>216</sup> In the 2024 TFR, DHS also invoked the exception under 5 U.S.C. 553(d)(1)—to wit, a

<sup>209</sup> See 89 FR 24648 (Apr. 8, 2024).

<sup>210</sup> See 89 FR 24628, 24645 (Apr. 8, 2024).

<sup>211</sup> See DHS, USCIS, OPQ, *I-765 Application for Employment Authorization Automatic Extension Eligible Renewals Pending Beyond 540-Day Automatic Extension Pending as of June 30, 2024*, CLAIMS3 & ELIS, queried 08/2024 (showing that as of June 30, 2024, out of approximately 260,000 renewal EAD applications pending, under 150 were pending more than 540 days after expiration).

DHS appreciated that the 2024 TFR did not resolve potential uncertainty with respect to all renewal EAD applications given the variables that impact data projections, and DHS believed it was premature to grant an automatic extension up to 730 days.<sup>217</sup> Thus, given the special circumstances, the temporal limitation and the narrowly-scoped population covered by the 2024 TFR, the 540-day extension was appropriate and reasonable to avert imminent and near-term harm to a specific class of applicants and their employers.<sup>218</sup> This narrowly tailored extension provided DHS additional time to pursue long term solutions, solicit public input, and fully assess the effect of policy and operational measures taken to reduce the backlog.<sup>219</sup>

For these same reasons, DHS declines to adopt the suggestion to increase the automatic extension period to 48 months (4 years). As discussed above, the up to 540-day automatic extension period offers a clear and uniform approach that employers are already familiar with, further reducing complexities and the risk that this final rule will result in confusion. Finally, DHS also notes that conditional lawful permanent residents are different from the classes of noncitizens affected by this rule. In contrast to those individuals, who do not have a permanent status, and could lose the basis for their EADs, conditional LPRs have received a final adjudication on their eligibility for lawful permanent residence on a conditional basis and are in fact LPRs even though their LPR status is subject to a future condition (*i.e.*, filing for and eligibility to remove the condition once the LPR has fulfilled the requirements of the condition).

*Comment:* A commenter suggested that DHS could apply different permanent automatic extension periods for dissimilar categories depending on what is operationally optimal so that businesses would not repeatedly be burdened by lapses caused by processing backlogs.

*Response:* DHS declines to adopt the suggestion that different automatic extension periods be set for different EAD renewal categories. Doing so would be burdensome to both employers and USCIS. Employers would be required to determine the basis for an employee's renewal EAD application as part of the

employment eligibility verification process and would also be forced to track the differing automatic extension periods for each category of renewal applications relevant to their workforce.

#### *K. Expand EAD Categories Eligible for Automatic Extension*

*Comment:* Multiple commenters remarked on the applicability of the TFR to certain classes of noncitizens currently not eligible for an automatic extension, including: DACA recipients; U and T nonimmigrants; religious workers; those under an order of supervision; humanitarian parolees; and those with pending renewal EAD applications, regardless of whether the requested renewal category is the same category as their current EAD and whether they timely filed their renewal EAD applications.

With respect to DACA recipients, commenters noted the adverse consequences of leaving those individuals without employment authorization given the vital roles that they play in their families, communities, and the U.S. economy. As for U and T nonimmigrants, commenters stated that access to stable and consistent employment could reduce vulnerability to abuse and exploitation. The commenters reasoned that stable income reduces the likelihood that survivors would need to rely on abusive family members, exploitative employers, or landlords. The commenters also reasoned that improving financial security for individuals and families helps to reduce and prevent intimate partner violence. A commenter who advocated for allowing an automatic extension for those with pending renewal EAD applications for different categories than their current EADs reasoned that this approach would prevent workers from leaving the workforce and avoid the economic challenges such workers might face if they did so. A commenter who suggested a further expansion of the rule to include individuals whose pending renewal applications were received by USCIS after the expiration date of their work permits explained that there may be reasons beyond an applicant's control that lead to delayed receipt of their renewal EAD applications, and the consequence of not automatically renewing their employment authorization owing to their late filings is not being able to lawfully work for one year or longer.

Commenters also urged DHS to grant consecutive renewal grants for DACA and other deferred action recipients, so that the new DACA/EAD issuance begins on the date the prior issuance

expired, rather than the date where USCIS approved the request. The commenters also suggested that DHS eliminate the 150-day queue policy, which prevents applicants from submitting a renewal application earlier than 150 days before their current DACA expiration. The commenter reasoned that this would allow applicants to file for a renewal early, without concern that the early approval would lead to an overlap in coverage. Additionally, the commenter stated that backdating the date of the renewal approval to avoid a gap in work authorization would provide applicants with stronger arguments to be placed on unpaid leave, rather than terminated, since their documents would ultimately reflect no gaps in work authorization or lawful presence. The commenter said that such a change could be accomplished through sub-regulatory guidance and would not be problematic in light of existing legal challenges concerning DACA.

A commenter urged DHS to move forward with a final rule that is consistent with a robust implementation of the U.S. National Action Plan to End Gender-Based Violence,<sup>220</sup> as well as ensuring consistency with congressional intent to reinforce the progress communities have made to protect survivors of domestic violence, sexual assault, and human trafficking under the Violence Against Women Act (VAWA). The commenter stated that stable employment plays a pivotal role in an individual's ability to escape and overcome domestic violence and sexual assault, and therefore applauded the inclusion of VAWA self-petitioners and VAWA adjustment of status applicants under the 2024 TFR. A commenter encouraged DHS to apply the rule to others who have sought extensions of their employment authorization, especially applicants for U nonimmigrant status who have received deferred action or employment authorization pursuant to a bona fide determination under INA 214(p)(6), 8 U.S.C. 1184(p)(6).

*Response:* While DHS is sympathetic to the hardships that these groups face with expiring EADs and the circumstances that may lead to delayed renewal EAD application filings, DHS notes that expanding the categories of noncitizens who may receive an automatic extension under 8 CFR 274a.13(d) is beyond the scope of this rulemaking. Similarly, comments

<sup>220</sup> See The White House, U.S. National Plan to End Gender-Based Violence: Strategies for Action, <https://www.whitehouse.gov/wp-content/uploads/2023/05/National-Plan-to-End-GBV.pdf> (last visited Aug. 13, 2024).

substantive rule which grants or recognizes an exemption or relieves a restriction—to the APA's 30-day delayed-effective-date requirement following publication of a substantive rule. 89 FR 24628, 246540 (Apr. 8, 2024).

<sup>217</sup> See 89 FR 24628, 24648, 24654 (Apr. 8, 2024).

<sup>218</sup> See 89 FR 24628, 24653 (Apr. 8, 2024).

<sup>219</sup> See 89 FR 24650–54 (Apr. 8, 2024).

regarding the timing of DACA EAD approvals and the 150-day queue are also beyond the scope of this rule. Moreover, as noted in the 2024 TFR<sup>221</sup> and as discussed in this final rule, eligibility for the existing 180-day automatic extension, and for the increased automatic extension period, is limited to those EAD renewal applicants for whom an underlying adjudication regarding continued eligibility for an EAD is not required. Therefore, DACA recipients are ineligible.<sup>222</sup> As for TPS beneficiaries, as noted in the 2024 TFR, the increased automatic extension period provided by the 2024 TFR is available to many TPS beneficiaries.<sup>223</sup> Also, USCIS maintains information on its website that clarifies the availability of EAD automatic extensions.<sup>224</sup> Consistent with what DHS previously stated in the AC21 Final Rule, DHS is amending 8 CFR 274a.13(d)(1)(i)<sup>225</sup> to clarify that, for TPS-related EADs, the automatic EAD extension provision applies to individuals who file their renewal EAD applications during the re-registration period described in the **Federal Register** notice applicable to their country's TPS designation.<sup>226</sup> In addition, DHS is adding language to clarify that the period of the up to 540-day automatic EAD extension starts the day after the expiration date on the face of the EAD.<sup>227</sup>

Regarding the suggestion that the automatic extension period apply to pending EAD renewals that were not timely filed, DHS declines to adopt this suggestion. For those noncitizens who are required to apply for employment authorization, their employment authorization generally expires on the date displayed on the EAD. Certain applicants who timely file a renewal application may receive an automatic extension of their work authorization while the timely filed renewal application is pending with USCIS. A noncitizen with expired employment authorization is, with certain exceptions, no longer authorized to work.<sup>228</sup> With certain exceptions, there are adverse consequences for noncitizens who continue to engage in or accept unauthorized employment,

including eligibility for future immigration benefits.<sup>229</sup> Allowing noncitizens with an expired EAD to seek an automatic extension also creates difficulties for employers, who are held accountable as part of the Form I-9 Employment Eligibility Verification requirements.<sup>230</sup> Thus, in recognition of the INA's approach regarding unauthorized employment,<sup>231</sup> including the accountability of employers and related enforcement issues, DHS declines to accept the suggestion to allow those with expired employment authorization and/or EADs to apply for an up to 540-day automatic extension period. A rule addressing renewal applications that were not timely filed would go beyond the purpose of the automatic extension, which is to reduce the risk of a lapse in employment authorization due to USCIS processing delays for applicants who have already been determined to be eligible.<sup>232</sup> If the renewal application is not timely filed, it may raise questions as to whether the applicant remains eligible for employment authorization under the same category, and thus the automatic extension might no longer be an extension of employment authorization where an underlying adjudication is not required to determine eligibility. Because there would not be a reasonable assurance of continued eligibility in cases where the renewal application is not timely filed, DHS declines to adopt the commenter's suggestion to provide for an automatic grant of employment authorization based on an untimely filed renewal application.

The remaining requests to expand the classes of people eligible for automatic extension are also beyond the scope of this rule, including allowing for the renewal EAD application category to be different than the category of the currently held EAD. Furthermore, in initially codifying the up to 180-day automatic extension, DHS explained that requiring the same category was meant to ensure that only eligible noncitizens receive automatic extensions of their EADs and to protect

the employment authorization program from abuse. DHS reasoned that the resulting Notice of Action (Form I-797C) would indicate the employment authorization category cited in the application, which would help ensure, both to DHS and to employers, that such a notice was issued in response to a timely filed renewal application.<sup>233</sup> The same reasoning would advise against adopting the commenters' suggestions here or in a future rulemaking.

*Comment:* A commenter emphasized the importance of employment authorization and EADs for unaccompanied children with pending asylum applications, noting that these government-issued documents often serve as their only form of identification. While endorsing the 2024 TFR on the basis that it would allow children to access necessary services, safe and lawful employment, and eligible legal relief, the commenter also expressed concern for those who receive EADs through the deferred action policy issued by USCIS in March 2022,<sup>234</sup> which, the commenter stated provides a pathway for deferred action and related employment authorization for youth with approved Special Immigrant Juvenile (SIJ) petitions. The commenter elaborated that, unlike SIJ-classified youth who receive EADs based on a pending adjustment application, youth who receive EADs through deferred action would not be eligible for automatic EAD extensions, which could become problematic within the next two years when their initial grants of up to four years of deferred action employment authorization expire. The commenter also remarked that EAD renewal backlogs could undermine the goals of the March 2022 SIJ deferred action policy and result in negative outcomes for both cohorts of SIJs, such as job loss. In light of these concerns, the commenter recommended the following measures, so that USCIS could prevent harm from government delays and ensure timely consideration of all EAD and humanitarian protection applications: (1) increasing the length of EAD validity periods to five years for additional categories; (2) permitting electronic filing for applications addressed through the automatic extension; (3) providing clearer documentation to demonstrate automatically-extended employment authorization, such as a stand-alone document, a paper card similar to the I-

<sup>229</sup> For example, a noncitizen may be barred from adjusting status to that of a lawful permanent resident under INA 245, 8 U.S.C. 1255. See INA 245(c)(2) and (c)(8), 8 U.S.C. 1255(c)(2) and (c)(8).

<sup>230</sup> See 8 CFR 274a.3 and 8 CFR 274a.10.

<sup>231</sup> See INA 274A, 8 U.S.C. 1324a.

<sup>232</sup> See 81 FR 82398, 82463 (Nov. 18, 2016) (explaining that the automatic extension provision "helps to ensure that individuals are eligible to receive automatic extensions of their EADs under this rule only if there is reasonable assurance of their continued eligibility for issuance of a full duration EAD."); 89 FR 24628, 24673 (Apr. 8, 2024) (noting that "[t]his rule extends current employment authorization for individuals who are at risk of losing it solely because of USCIS processing delays.").

<sup>233</sup> See 81 FR 82398, 82463 (Nov. 18, 2016).

<sup>234</sup> DHS, USCIS, *Special Immigrant Juvenile Classification and Deferred Action* (Mar. 7, 2022), <https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf>.

<sup>221</sup> See 89 FR 24628, 24632 (Apr. 8, 2024).

<sup>222</sup> See 8 CFR 274a.13(d)(1)(iii).

<sup>223</sup> See 89 FR 24628, 24632 (Apr. 8, 2024).

<sup>224</sup> See 8 CFR 274a.13(d)(1); DHS, USCIS, *Automatic Employment Authorization (EAD) Extension*, <https://www.uscis.gov/working-in-the-united-states/information-for-employers-and-employees/automatic-employment-authorization-document-ead-extension> (last visited Aug. 1, 2024).

<sup>225</sup> See new 8 CFR 274a.13(d)(1)(i).

<sup>226</sup> See 81 FR 82398, 82455 (Nov. 18, 2016).

<sup>227</sup> See 8 CFR 274a.13(d)(1).

<sup>228</sup> See, e.g., 8 CFR 274a.1(a) and 8 CFR 274a.14(a).

94 card, or a specific receipt notice language confirming the automatic extension of validity of the EAD and stating the date through which the renewal applicant would remain authorized to work; and (4) prioritizing the timely adjudication of humanitarian protection applications that form the bases for employment authorization and lawful status to support the stability, independence, and wellbeing of unaccompanied children and others who are seeking protection.

*Response:* DHS notes that under the current regulations governing EAD renewals and the 180-day automatic extension, individuals who have received deferred action are not eligible for the automatic extension.<sup>235</sup> Moreover, as part of this rulemaking, DHS is focused on issues related to categories currently covered by the automatic extension provision and does not address adding other employment categories. This rulemaking also does not address prioritizing the adjudication of humanitarian protection applications. Therefore, these concerns are beyond the scope of the 2024 TFR and will not be addressed in this rulemaking.

With respect to permitting electronic filing for applications addressed through the automatic extension, expanding the categories that would be eligible for electronic filing is also beyond the scope of this rulemaking. That being said, USCIS is committed to employing technological solutions and efficiencies to reduce processing times. Offering the option to file Form I-765 online makes the process of applying for immigration benefits efficient, secure, and convenient for more applicants and increases operational efficiencies for USCIS. Therefore, separate from this rulemaking, USCIS will continue to track this issue and work to increase the number of categories eligible for online filing.

As for providing clearer documentation to demonstrate automatically extended employment authorization and/or EADs, DHS is revising receipt notice language to be more clear and is looking for ways to do more, but is unable to tailor receipt notices at this time. Tailoring would require significant development work to program the USCIS Lockbox and its electronic counterpart, the Electronic Immigration System (ELIS), to produce Form I-797C, Notices of Action, that are more individualized to a given filing.

<sup>235</sup> See 8 CFR 274a.13(d)(1)(iii). See also DHS, USCIS, *Automatic Employment Authorization Document (EAD) Extension* (last reviewed/updated Oct. 9, 2024), <https://www.uscis.gov/eadautoextend> (last visited Oct. 23, 2024) (listing “Categories Eligible for Automatic Extensions”).

This development work would also compete with or delay other USCIS development priorities. DHS will continue to explore technological improvements such as this one while considering the impact of such an effort on other priorities.

#### L. EAD Validity Period

*Comment:* Commenters shared quotes from clients of legal service providers urging DHS to make EAD validity permanent or indefinite, or increase validity periods until asylum cases are processed, or previous work permits are renewed.

Some commenters expressed support for the recent increase of the EAD validity period for certain categories and urged DHS to similarly increase the validity period for other EAD categories, reasoning that such an increase would reduce the number of renewal requests USCIS receives, help address existing backlogs and allow USCIS to direct resources to other vital areas.

A commenter urged DHS to revise EAD validity periods to ensure that EADs remain valid for the entire period it takes to adjudicate cases before USCIS and in immigration court. The commenter said that such increased validity periods would support immigrant workers and their families, while also providing employers with stability and assurance that their workers’ employment authorization will not lapse. The commenter said that the change would decrease the likelihood that DHS would need to repeatedly issue temporary rules to address administrative delays.

Another commenter recommended that DHS align the validity period of an EAD with the duration of the visa holder’s underlying immigration status, allowing the EAD authorization to continue for as long as the holder acts in good faith to extend their underlying status. A commenter suggested that DHS set the duration of the work permit for a fixed period, such as 5 years, and establish conditions for renewing the EAD with ease, including by allowing noncitizens to file renewal applications 1 year before expiration.

A commenter stated that some noncitizens seek EADs as a valid form of identification necessary for employment and suggested that those individuals with an indefinite status should be issued an EAD with no expiration date, or with a validity period of at least 10 years.

A commenter suggested that USCIS allow EADs to remain in effect indefinitely unless the noncitizen receives a removal order from a component of DHS. The commenter

suggested that USCIS administer a database that employers can consult for noncitizens who have been issued a removal order.

*Response:* DHS will not adopt the commenters’ suggestion to issue EADs that are permanently or indefinitely valid. To do so would undermine the integrity of EADs. Individuals whose employment authorization is temporary would be in possession of an acceptable Form I-9, Employment Eligibility Verification, document that would not expire, even when the individual no longer has authorization to work. Having an expiration date on documents that show temporary employment authorization provides stability and certainty to employment-authorized individuals and their employers and promotes the ability of employers to fulfill their Form I-9 responsibilities. Without an expiration date, employers would not know when to reverify an employee with temporary employment authorization and could end up continuing to employ an unauthorized worker. Providing an expiration date for the EAD also reduces opportunities for fraud and allows USCIS to refresh the background checks and other security related processes that USCIS undertakes with each EAD application, in addition to verifying continuing eligibility for the EAD. These measures are consistent with reasoning from the AC21 Final Rule.<sup>236</sup>

The EAD renewal requirement thus allows DHS to ensure that continued employment authorization is merited by the noncitizen’s circumstances. In addition, if the EAD of an employee with temporary employment authorization does not have an expiration date, there would be no reverification date for the employer to check whether the employee continues to be employment authorized.<sup>237</sup> The temporary validity of an EAD prompts employers to periodically verify that their employees with temporary employment authorization continue to be authorized to work since it is unlawful to employ unauthorized

<sup>236</sup> In the AC21 Final Rule, DHS wrote that “the main security and fraud risks underpinning DHS’s decision to remove the 90-day EAD adjudication timeline and interim EAD requirements flow from granting interim EADs to individuals before DHS is sufficiently assured of their eligibility and before background and security checks have been completed.” DHS expressed its belief that “any reduction in the level of eligibility and security vetting before issuing evidence of employment authorization, whether on an interim basis or otherwise, would both be contrary to its core mission and undermine the security, quality, and integrity of the documents issued.” See 81 FR 82398, 82462 (Nov. 18, 2016).

<sup>237</sup> See 8 CFR 274a.2(b)(1)(vii).

workers.<sup>238</sup> Furthermore, it is unlawful for employers to continue to employ a noncitizen who is or has become unauthorized to work.<sup>239</sup>

Permanent or indefinite EAD validity would also place a burden on USCIS to periodically affirm that the noncitizen remains eligible for the EAD, and, if they do not, initiate contact with the noncitizen, who may have moved without informing USCIS. This would further strain USCIS resources and potentially have an adverse effect on general EAD processing.

The suggestion that EAD validity periods correlate with the duration of an asylum adjudication or immigration court proceedings is beyond the scope of the rule. Moreover, the length of such proceedings for any individual case is highly variable, making it challenging to set a specific validity period. For similar reasons, DHS also declines to adopt the recommendation that all EAD validity periods be aligned with underlying status or be made valid for 10 years for those with indefinite status seeking to use their EADs for identification purposes—individual circumstances vary such that an across-the-board indefinite or 10-year validity period is inappropriate. DHS further notes that there are other forms of state-issued identification that may better serve as identification.

DHS also declines to adopt the suggestion that EAD validity periods be increased for additional populations beyond those for which USCIS now issues EADs with an up-to-five-year validity period,<sup>240</sup> as this comment is beyond the scope of this rule, which addresses the renewal EADs for those applicants covered by the automatic extension provision at 8 CFR 274a.13(d)(1).

#### M. Automatic Renewals

*Comment:* A commenter urged DHS to consider implementing an automatic EAD renewal process for noncitizens with pending asylum applications, wherein their EADs would be automatically renewed if the asylum application is still pending after a 730-day automatic extension. The commenter said that such an automatic process would reduce the processing burden for USCIS, while not necessarily requiring DHS to forgo fee collection.

The commenter stated that automatic renewals would not pose a risk that ineligible asylum seekers would be incorrectly granted renewals, citing reports that 96.8 percent of asylum seekers were approved for work permit renewals in 2020.

*Response:* DHS declines to adopt these suggestions. If an EAD were to be automatically renewed, under current technological processes and systems, USCIS could not issue additional notices because notices are associated with the unique receipt number assigned to an individual application. An automatic renewal would essentially function as a new application without a unique receipt number. Without additional documentation from USCIS stating that a renewal EAD application was still pending and that the EAD is further extended, it would be burdensome and potentially confusing for employers to determine if the EAD's validity continued to be extended.

Consecutive renewals could also potentially require what is referred to as backdating of an approval such that any gaps in employment authorization are erased, which would run counter to Congressional measures regarding unauthorized employment, including the accountability of employers that employ noncitizens who are not authorized to work in the United States. Also, neither the TFRs nor this final rule intend to address periods of unauthorized employment.<sup>241</sup>

#### N. Application, Adjudication, and Notification Processes

##### 1. General Comments on Adjudication and Application Times and Prioritization of Reviews

###### i. EAD Processing Resources and Priorities

*Comment:* Several commenters stated that USCIS' processing times should be more efficient, suggesting that USCIS assign more resources and staff to processing work permit applications. Some of these commenters remarked that work permit issuance should be “first come, first serve” and prioritize individuals whose permits are close to expiration.

Some commenters suggested that USCIS update its data tracking system so that it can better track work permit expiration dates. One organization

suggested that DHS: (1) immediately create a mechanism for noncitizen workers to identify themselves to USCIS if their EAD will expire in less than 30 days; and (2) build technology to identify and adjudicate applications based on their expiration date. The organization reasoned that implementing these systems would lead to fewer employees losing their work authorization, thereby reducing disruptions to the labor force and business operations.

*Response:* DHS appreciates the commenter's suggestions on processing improvements. As discussed in the 2024 TFR, DHS has allocated additional resources to EAD processing, and it is continually seeking to improve efficiency in EAD adjudications across categories.<sup>242</sup> Generally, I-765 applications are processed on a “first-in-first-out” basis, but certain applications may require additional time for review.

DHS does have capability to track work permit expirations. DHS understands the commenter's intent in this regard, consistent with suggestions from other commenters, is to use such data to prioritize applications for those with expiring EADs on that basis. Diverging from general FIFO processing poses substantial technological challenges and could lead to unintended consequences such as benefiting filers who wait to submit I-765 applications until close to the expiration of their underlying EADs at the expense of others who have planned ahead. Significant information technology resources required to modify USCIS systems in this manner would have to be pulled away from other high priority projects. As noted in the 2024 TFR's discussion of alternatives,<sup>243</sup> this option is not operationally feasible.

Operating on a first-in-first-out basis also improves workflow predictability and parity across product lines to allow for efficient pre-processing of cases, the application of systemic checks, and assignment of work to officers. Although renewal applications are managed electronically, in the same system that assigns work to officers, systems currently do not have the ability to use the expected expiration of a previous benefit in order to queue to work on that basis. Thus, adjudicating cases based on expiration dates would require that they be manually assigned to the adjudicator. Pivoting to a manual assignment and dynamic, expiration-date-based case management model would reduce adjudicative efficiency as well as unintentionally grant preference and

<sup>238</sup> See INA 274A(a)(1), 8 U.S.C. 1324a(a)(1).

<sup>239</sup> See INA 274A(a)(2), 8 U.S.C. 1324a(a)(2).

<sup>240</sup> See DHS, USCIS, *USCIS Increases*

*Employment Authorization Document Validity Period for Certain Categories* (Sept. 27, 2023), <https://www.uscis.gov/newsroom/alerts/uscis-increases-employment-authorization-document-validity-period-for-certain-categories> (last visited Oct. 23, 2024).

<sup>241</sup> See, e.g., the explanation in the 2022 TFR. 87 FR 26630 (“However, in recognition of Congress' clear intent in the INA regarding unauthorized employment, including the accountability of employers that employ noncitizens who are not authorized to work in the United States, this TFR does not address periods of unauthorized employment.”).

<sup>242</sup> See 89 FR 24628, 24640–24644 (Apr. 8, 2024).

<sup>243</sup> See 2024 TFR, 89 FR at 24643.

priority to late filers who would then require manual pre-processing review and assessment.

In summary, the TFRs were intended to help prevent applicants with timely filed renewals from losing employment authorization. DHS will also continue to explore avenues to decreasing EADs adjudication times as described in the preamble of the 2024 TFR.

#### ii. Decentralizing of EAD Processing and Other Processing Recommendations

*Comment:* A commenter recommended that USCIS decentralize work permit review offices and allow offices to work on applications within their State or area. The legal services provider also suggested that high-skilled noncitizens should have access to expedited processing and remarked that a premium processing service fee could generate revenue for USCIS.

*Response:* DHS declines to adopt the suggestion that EAD processing be decentralized. EAD renewals are primarily processed at USCIS Service Centers, which are designed and organized and have the resources to adjudicate higher volume applications and petitions that do not require in-person interaction with the public. Local offices such as districts and field offices typically handle smaller volume filings and are geared towards public interaction rather than large-scale processing and handling of files.

#### iii. General Processing

*Comment:* A commenter expressed concern that renewal applications filed between the expiration of the 2022 TFR and the effective date of the 2024 TFR would receive only the 180-day automatic extension provided for in the current regulations and would not benefit from a longer automatic extension provided by the 2024 TFR.

A commenter expressed concern that first-time work permit applications are processed more quickly than renewals. The commenter generally requested more transparency with regard to adjudication timelines.

A commenter recommended that USCIS follow the plain language of regulations such as 8 CFR 274a.13(d)(1) and allow noncitizens with TPS to stack their **Federal Register** Notice and 540-day EAD extensions.

Several commenters asked clarifying questions related to their EADs. For example, applicants requested more information about what to do if their extension expires or if they qualify for the 2024 TFR extension but are not allowed to return to work. A commenter asked if their employer could deny the extension of their EAD. Others

requested more information about how to obtain a letter confirming that their permit had been revalidated.

*Response:* Regarding the suggestion that renewal applications filed between the expiration of the 2022 TFR and the effective date of the 2024 TFR retroactively receive a 540-day automatic extension, DHS notes that the 2024 TFR and this Final Rule provide an automatic extension of up to 540 days to eligible renewal EAD applications, including those filed between the end of the filing period under the 2022 TFR (October 27, 2023) and the effective date of the 2024 TFR (April 8, 2024), if the renewal EAD application was still pending with USCIS on the date the 2024 TFR took effect.

Furthermore, the validity of TPS-based EADs does not get stacked with each different type of EAD automatic extensions. DHS is clarifying that the automatic extension of TPS-based EADs under 8 CFR 274a.13(d) starts from the expiration date on the face of the EAD.<sup>244</sup> This is so, even if the EAD was also automatically extended under a blanket provision in a relevant **Federal Register** notice. **Federal Register** notices that automatically extend TPS-related EADs identify the EADs that get automatically extended by listing the “Card Expires” date on the face of the EAD. The notice also provides the new validity end date of that EAD so that stakeholders do not have to calculate the EAD’s new expiration date. If the Secretary extends a TPS designation, the **Federal Register** notice announcing the extension will provide the specific dates of the re-registration period within which TPS beneficiaries must file their Form I-821, Application for Temporary Protected Status, to maintain TPS. If a TPS beneficiary files their renewal EAD application during their applicable re-registration period, their TPS-based EAD is automatically extended under new 8 CFR 274a.13(d) for up to 540 days from the expiration date on the face of the EAD. When completing Form I-9, Employment Eligibility Verification, employees who present a TPS-related EAD that has been automatically extended may choose either the extended validity period provided by a **Federal Register** notice, if applicable, or the new EAD expiration date under this regulation but, as noted above, this final rule does not create an entitlement to an automatic extension that exceeds the period of a TPS designation. An up to 540-day extension under 8 CFR 274a.13(d) does not start from the EAD

extension date provided by a **Federal Register** notice.

Regarding what an individual must do if the automatic extension expires before they receive their new EAD, employers must reverify their employee’s employment authorization when their employment authorization or documentation expires.<sup>245</sup> To reverify, employees must present any acceptable documentation that shows evidence of continued employment authorization. Employees who do not present acceptable documentation can no longer be employed.<sup>246</sup> Regarding comments asking whether an employer could deny the extension of their EAD, employers cannot reject unexpired acceptable documentation that appear to be genuine and relate to the employee.<sup>247</sup> Employees whose unexpired and acceptable documentation—which includes an EAD that has been automatically extended by a Form I-797, Notice of Action, indicating receipt of a timely-filed renewal EAD application—is rejected by their employers may seek redress through IER, which handles claims of unfair documentary practices during the Form I-9 process.<sup>248</sup> For commenters who requested information about obtaining a letter confirming their permit was revalidated, Form I-797C, Notice of Action, indicating receipt of a renewal EAD application is the document that USCIS sends out to show that an eligible EAD has been automatically extended.<sup>249</sup>

#### iv. Notification to Applicants

*Comment:* Several commenters recommended that USCIS reissue 540-day receipt notices to all eligible applicants who received a 180-day receipt notice between October 27, 2023, and April 8, 2024, but who are currently eligible for the 540-day extension. Alternatively, these commenters proposed that USCIS provide a mechanism for individuals to request new receipts as evidence of the longer automatic extension period. Similarly, another commenter recommended that USCIS issue interim EADs alongside these proposed receipt notices. One of these commenters further added that the receipt notices should provide clear indication of the dates for which it remains valid.

<sup>245</sup> See 8 CFR 274a.2(b)(1)(vii).

<sup>246</sup> See 8 CFR 274a.2(b)(1)(vii).

<sup>247</sup> See 8 CFR 274a.2(b)(1)(ii)(A).

<sup>248</sup> See DOJ, Civil Rights Division, *Immigrant and Employee Rights Section*, <https://www.justice.gov/crt/immigrant-and-employee-rights-section> (last visited Oct. 23, 2024).

<sup>249</sup> See 8 CFR 274a.2(b)(1)(vii) and 8 CFR 274a.13(d).

<sup>244</sup> See new 8 CFR 274a.13(d).

Several commenters recommended that USCIS provide workers with receipt notices (I-797C) to function as proof of employment, or that USCIS better enforce acceptance of I-797Cs as employment authorization among employers. One of the commenters proposed specific language for DHS to include in the rulemaking regarding Form I-797C:

In the event that the agency fails to adjudicate this application within 90 days of the receipt notice date, this Form I-797C will constitute proof of interim employment authorization for an additional period of 90 days. For the purposes of I-9 verification, the applicant may present this Form I-797C, together with their expired Employment Authorization Document showing the same employment authorization eligibility code, as evidence of continued work authorization.

Several organizational commenters commenting on behalf of their individual members requested that USCIS provide standardized documentation or some type of written confirmation to noncitizens of their work authorization extension to present to employers or government agencies. One commenter urged USCIS to send written letters of automatic extension to applicants, and to send work authorization cards within 180 days of receipt of applications.

Another commenter requested that USCIS issue Form I-94 and allow the form to be used as evidence of employment authorization by noncitizens. The commenter clarified that it should be permissible to use Form I-94 to prove work authorization under List C #7 from the List of Acceptable Documents, “even if their I-94 could also be considered a List A receipt.” The commenter stated that this change would reduce delays caused by human error or mail delays that prevent noncitizens from receiving an EAD.

*Response:* Given the high volumes of Form I-765 applications, DHS is not currently considering redirecting resources to developing new processes and documents but will continue to focus efforts on increasing efficiency in adjudications and backlog reduction. Further, DHS already provides that a Form I-797C, Notice of Action, indicating receipt of a Form I-765 that demonstrates the requirements of 8 CFR 274a.13(d) have been met automatically extends an EAD that is expired on its face.<sup>250</sup> For eligible renewal EAD

<sup>250</sup> See DHS, USCIS, *Automatic Employment Authorization Document (EAD) Extension* (last reviewed/updated Oct. 9, 2024), <https://www.uscis.gov/eadautoextend> (last visited Oct. 23, 2024); DHS, USCIS, *M-274 Handbook for Employers, Section 5 Temporary Increase of Automatic Extension of EADs from 180 Days to 540*

applicants, under the 2024 TFR the automatic increase is up to 540 days if (1) the renewal application was timely filed on or after October 27, 2023 and was pending on or after April 8, 2024 or (2) if the renewal application was filed during the 540-day period beginning on or after April 8, 2024, and ending September 30, 2025. This final rule is permanently extending that automatic extension period to up to 540 days for eligible EAD renewal applicants.

Forms I-797C (receipt notices) for EAD renewal applicants have standardized language regarding the automatic extension, and when combined with the facially expired EAD, is acceptable documentation for Form I-9, Employment Eligibility Verification, purposes that can be presented to employers or government agencies showing employment authorization. DHS is revising language on the Forms I-797C to more clearly describe the eligibility requirements for this automatic EAD extension. The changes DHS is making in this rule to permanently increase employment authorization and/or EAD validity for up to 540 days is greater than the 90 days the commenter is suggesting, so it provides employers and employees with more stability and reduces the need for employers to reverify or update their Forms I-9.

Some Forms I-94, Arrival-Departure Record, which are documents issued by DHS, are already acceptable as a List C document that shows employment authorization.<sup>251</sup> However, for various reasons depending on the classification, not all Forms I-94 are acceptable for Form I-9 purposes and DHS is not currently considering revising the lists of documents that are acceptable for Form I-9 completion.

#### v. Suggestions To Improve USCIS’ Systems or Applicant-USCIS Communication

*Comment:* Commenters recommended that an automated system be created to process and issue work permit applications or renewal requests. Some

*Days* (last reviewed/updated Apr. 8, 2024), <https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/50-automatic-extensions-of-employment-authorization-and-or-employment-authorization-documents-eads-in> (last visited Oct. 23, 2024).

<sup>251</sup> 8 CFR 274a.2(b)(1)(v)(C)(7) and DHS, USCIS, *M-274 Handbook for Employers, Section 13.3 List C Documents That Establish Employment Authorization* (last reviewed/updated Mar. 8, 2024), <https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/130-acceptable-documents-for-verifying-employment-authorization-and-identity/133-list-c-documents-that-establish-employment-authorization> (last visited Oct. 23, 2024).

commenters urged USCIS to expand categories eligible for electronic filing of applications, to allow electronic filing of fee waiver requests; another commenter specifically requested that USCIS accept electronic filings for applications submitted with fee waivers.

In response to a question in the preamble to the 2024 TFR (“Should DHS consider other solutions to mitigate the risk of expiring employment authorization and/or EAD validity for some or all applicants covered by the automatic extension provision?”), a commenter urged DHS to modernize its systems and automate processes such that noncitizens can have insight into their application or case statuses and can review actions needed on their part. Likewise, another commenter encouraged USCIS to streamline its processing of EAD renewals by digitizing Form I-765 and beginning adjudication for noncitizens as soon as they are admitted into the United States and allowing noncitizens to access their status via an online portal.

Similarly, a few commenters urged USCIS to implement a mechanism by which individuals with potential gaps in work authorization can alert USCIS and request expedited processing. A commenter added that USCIS could also consider a system for employers, applicants, and agencies to look up authorization confirmation for noncitizen employees.

*Response:* DHS declines to adopt the suggestion that an automated system be created to adjudicate EAD categories for which applicants are regulatorily mandated to apply. Each application must be reviewed to ensure that the basis for an EAD continues to exist. While USCIS does use electronic systems to streamline adjudicative processes to the maximum extent possible, applications that are incomplete or contain discrepancies require additional officer review and consideration to determine if a request for evidence or other action is required irrespective of the application’s intake via paper or electronic means. Efforts to allow online filing of fee waivers are being considered.

Regarding the suggestion that DHS systems be modernized and automated so that applicants can review any action that is required of them, USCIS maintains a system that allows noncitizens to check the status of their application via its Case Status Online web page.<sup>252</sup> While the system will display whether action from the applicant is required such as when

<sup>252</sup> See DHS, USCIS, *Case Status Online*, <https://egov.uscis.gov> (last visited Aug. 1, 2024).

USCIS issues a Request for Evidence, the system does not have the capacity to list specific items or information that might be needed to complete the adjudication.

DHS notes that noncitizens who wish to request that an application be expedited may do so online through the USCIS website.<sup>253</sup> Also, USCIS already allows electronic filing of certain categories of Form I-765, Application for employment Authorization through myUSCIS to include most student categories, initial and renewal (c)(8) applicants, and TPS applicants seeking employment authorization.<sup>254</sup> Additionally, USCIS recently launched PDF intake for a number of EAD categories, which allows applicants to upload a completed Form I-765 and supporting evidence in PDF format. This process makes online filing simpler, is available to more filing categories, and is particularly beneficial for representatives who use external software to enter and manage client cases. DHS also manages and administers E-Verify, which allows participating employers to electronically confirm the employment eligibility of their newly hired employees.<sup>255</sup>

## 2. Transparency, Clarity, and Outreach to External Stakeholders

*Comment:* Some commenters expressed support for the rulemaking but encouraged USCIS to expand its outreach. For instance, an advocacy group expressed support for the 2024 TFR and urged USCIS to make it permanent but recommend that USCIS conduct outreach initiatives to ensure state employees are thoroughly educated on the TFR and its implications for providing state benefits. The commenter expressed that State employees' lack of familiarity with the TFR could result in unnecessary delays in processing requests for state-issued documents, stating that for example most DMV locations are unfamiliar with immigration processes and visa categories and staff often do not have the time to learn these procedures "on the spot" while a customer is standing at the counter. The commenter further stated that noncitizens rely heavily on Federal documents, including valid EADs, to access State identification cards, driver's licenses, and other State

benefits. The commenter added that employees might need additional time to verify USCIS EAD policies online, consult with supervisors, or seek clarifications, prolonging processes and creating bureaucratic hurdles for applicants. The commenter recommended that USCIS issue a memorandum to state agencies explaining the automatic extension and its relevance to state operations in the DMV context. The comment further recommended that USCIS provide a letter addressed to each beneficiary of the automatic extension stating that their facially expired EAD card has been automatically extended for a specified period while their renewal application is being adjudicated. The commenter stated that this information could be included in the I-765 Receipt Notice to enhance efficiency, and that the individualized letter or Notice having this declaration coupled with the expired EAD card may reduce the confusion and delays noncitizens may face at the DMV.

This commenter and other commenters proposed the following suggestions to improve clarity and avoid confusion among DMVs, employers, and noncitizens:

- Conduct outreach initiatives to ensure State Department of Motor Vehicles (DMVs) and all State employees are educated on the TFR and its implications for providing State benefits;
- Ensure any blanket extensions of EAD status are immediately reflected in the SAVE system so that States may ensure eligibility and legal services determinations are made appropriately and based on valid verification methods;
- Implement a robust public awareness campaign to educate employers about the TFRs, including the prohibitions against any employment discrimination that may result from confusion around EAD extensions;
- Provide robust guidance for employers to ensure that automatic extension periods are honored, including physical copies of guidance as well as a regularly updated website where employers can seek answers;
- Conduct public engagements with associations of human resources staff, as well as professional employment organizations, concerning the up to 540-day automatic extension;
- Amend Form I-9, Employment Eligibility Verification, and provide detailed guidelines regarding the TFRs in the I-9 process;

- Continue DHS's "Stakeholder Invitations" and "Stakeholder Messages;"
- Update the USCIS Calculator and USCIS website; and
- Simplify and improve USCIS resources about the automatic extension.

*Response:* DHS is aware of the ongoing challenges for DMVs, other benefit granting/license issuing agencies, and employers recognizing that a facially expired EAD has been automatically extended if all of the requirements are met. DHS has made changes in this rule to even more clearly explain when the automatic extension applies, and how to count the days associated with that extension.

SAVE verifies EAD expiration dates that are automatically extended under this rule and encourages user agencies, including DMVs, to continue to submit verification requests to obtain this information. USCIS continues to review ways to improve the process to verify the immigration status and employment eligibility of applicants whose automatically extended EADs are facially expired, when appropriate. This includes making any necessary updates to USCIS source systems to better track the automatic extension dates, providing revised receipt notices regarding eligibility for automatic extensions, and ensuring updated information is available to both SAVE and E-Verify which are not source systems.

As noted above, USCIS is also revising receipt notice language to more clearly describe the eligibility requirements for this automatic EAD extension. USCIS is also considering ways to tailor the Form I-797C with existing source system information, such that only individuals who may be eligible for an automatic EAD extension based on the category of their renewal application receive a notice that describes eligibility requirements for the automatic extension.

USCIS also intends to provide robust communications and engagements to address these concerns. SAVE and E-Verify continue to engage with benefit-granting agencies and employers on updates to USCIS policies and procedures as they are published, including web page updates, stakeholder engagements and communications sent via email. On July 24, 2024, USCIS significantly expanded one of its web pages to clearly delineate the requirements and eligibility for an automatic EAD extension at <https://www.uscis.gov/eadautoextend>, which includes an extensive 540-day automatic extension calculator.

<sup>253</sup> See DHS, USCIS, *Expedite Requests*, <https://www.uscis.gov/forms/filing-guidance/expedite-requests> (last visited Aug. 1, 2024).

<sup>254</sup> See DHS, USCIS, *Forms Available to File Online*, <https://www.uscis.gov/file-online/forms-available-to-file-online> (last visited Aug. 1, 2024).

<sup>255</sup> See DHS, USCIS, *E-Verify* (last updated June 2, 2023), <https://www.e-verify.gov> (last visited Oct. 23, 2024).



While the Form I-9, Employment Eligibility Verification, and its instructions will not require revision because of this rulemaking, USCIS intends to make corresponding updates clarifying existing TFR guidance in the M-274, Handbook for Employers, and on I-9 Central, as needed, to help employers determine whether an employee is eligible for the automatic extension of up to 540 days provided in this rulemaking. USCIS may also clarify existing guidance in the M-274 on how employers should complete the current Form I-9 for those employees whose EADs have been automatically extended for up to 540 days through this rulemaking. USCIS has already published updates to the calculator at <https://www.uscis.gov/eadautoextend> to provide clearer guidance and information about eligibility for automatic extensions of employment authorization and/or the EAD.

*Comment:* While commending USCIS for its efforts to reduce the backlog in caseload and improve the timeliness of the legal presence verification requests associated with driver's license transactions, a commenter expressed general concern regarding the SAVE system that state driver's license agencies use to verify a noncitizen's legal presence prior to conferring the benefit of a REAL ID-compliant driver's license.<sup>256</sup> The commenter stated that although USCIS is making improvements to the SAVE system, many cases presented to front-line motor vehicle service clerks require additional verifications that cannot be verified at the time of transaction. Manual verification by SAVE (also called "additional verification") can require applicants to revisit service locations to repeat transactions and disrupt the ability of the states to serve other customers as they explain the need for additional verification.

With respect to the 2024 TFR in particular, the commenter stated that automatic extensions pose difficulties for state driver's license agencies. The commenter stated that blanket extensions of documents displaying an

expiration date that has already passed confuses the legitimacy of the documentation that driver's license applicants must present to show they meet the federal requirements for issuance of REAL ID-compliant driver's licenses. The commenter explained that for temporary driver's licenses, states must tie the validity period to the applicant's authorized period of stay in the United States.<sup>257</sup> The commenter stated that if the EAD document is expired on its face and the SAVE response does not verify the automatic extension of immigration status in real time, it becomes difficult for a state agency to issue the driver's license because the agency does not have the proper expiration date information. The commenter stated that the resulting inability to verify a driver's license applicant's legal status causes states to turn away otherwise eligible constituents and results in processing delays for customers of state driver's license agencies. The commenter also stated that reliance on paper products, including EADs, presents a security risk as they are easily manipulated or faked, and may present unverifiable data. The commenter stated that unless SAVE returns present, real-time verifiable data on all EADs, the proliferation of security risks to the states remains a possibility.

The commenter further expressed that the increase in the automatic extension period from up to 180 days to up to 540 days was significant and that an extension of this magnitude makes tracking documentation associated with case files more laborious and widespread with a greater potential impact to a larger demographic. The commenter also stated that the increase may amount to an increased workload for USCIS and dilute the availability of good data at an individual case level. The commenter asked that USCIS ensure that any blanket extension of legal status eligibility is immediately reflected in the SAVE system so that states may ensure eligibility and legal service determinations are made appropriately and based on valid verification methods.

*Response:* Although general concerns about SAVE are outside the scope of this rulemaking, USCIS acknowledges the importance of SAVE returning accurate information in real time, without requiring additional verification. SAVE verifies EAD expiration dates that are automatically extended under this rule at initial verification or additional verification when an automated response is not available. SAVE encourages user agencies, including

DMVs, to continue to submit verification requests to obtain this information. In FY 2024, SAVE provided a citizenship or immigration status response in 87% of the requests submitted at initial verification without requiring manual verification. In the limited situations where SAVE is unable to provide a response at initial verification, including where confirmation of an EAD automatic extension is not passed to SAVE by source systems, SAVE may not provide this information at initial verification in automated response. In situations where additional verification is required, user agencies must submit a request for additional verification so that SAVE can manually review the individual's immigration record and provide confirmation of any EAD automatic extension.

USCIS will continue to review ways to improve the process to verify the immigration status and employment eligibility of applicants whose automatically extended EADs are facially expired, when appropriate. Solutions may include making updates to USCIS source systems to better ensure accuracy of SAVE responses using information from an automatically extended EAD. Updates to USCIS source systems would help support SAVE's ability to accurately verify a benefit applicant's immigration status and employment authorization expiration date during the initial step, potentially reducing the need for user agencies such as state driver's license agencies to submit a request for additional verification. As noted above, USCIS is also revising receipt notice language to more clearly describe the eligibility requirements for this automatic EAD extension and considering the feasibility of tailoring the Form I-797C with existing source system information.

As it relates to the effects of this rule in particular, this rule does not require state driver's license agencies to engage in additional SAVE queries. In fact, because this rule opts for an up-to-540-day automatic extension instead of an up-to-180-day automatic extension, the rule could reduce the frequency with which certain driver's licenses expire and reduce the frequency with which states must run SAVE queries to verify legal presence information. The rule could also reduce confusion about the length of automatic extensions: instead of having a baseline automatic extension of 180 days and then periodic TFRs with longer extensions, this rule takes a more uniform approach. In addition, this rule also does not result in an increase in the need for additional verification in SAVE. To whatever

<sup>256</sup> The REAL ID Act and regulations require States to verify documents and information presented by applicant for a REAL ID compliant driver's license or identification card. REAL ID Act of 2005, as amended, Public Law 109-13, div. B, Title II, Sec. 202(c)(4)(A) (May 11, 2005) and 6 CFR 37.13(b). States must verify documents issued by DHS through SAVE or alternate methods approved by DHS, except that if two DHS-issued documents are presented, a SAVE verification of one document that confirms lawful status does not need to be repeated for the second document. 6 CFR 37.13(b)(1). In the event of a non-match, the DMV must not issue a REAL ID driver's license or identification card to an applicant and must refer the individual to USCIS for resolution. § 37.13(b)(1).

<sup>257</sup> REAL ID Act 202(c)(2)(C) and 6 CFR 37.21.

extent SAVE queries require additional verification in cases involving automatic EAD extensions, they would occur under the up-to-180-day automatic extension as well.

Regarding the comment that there are security risks associated with reliance on easily manipulated or faked data, or data that is unverifiable, DHS notes that the EAD remains the document that benefit-granting agencies may accept to verify immigration status using SAVE. The EAD is a secure document with state-of-the-art technology and security features.<sup>258</sup> The Form I-797C, Notice of Action, indicating receipt of a renewal EAD application, has sufficient identifying information including the applicant's name and eligibility category, to tie it to the eligible EAD that is being automatically extended. This Form I-797C is the mechanism that automatically extends the validity of the secure EAD. In addition, as noted, DHS is not introducing a new automatic extension; rather, DHS is increasing the duration of the codified automatic extension, which already calls for the use of an expired EAD with a timely-filed renewal EAD application Form I-797C notice as evidence that an eligible EAD has been automatically extended. States use SAVE to verify the validity period of an EAD to meet REAL ID requirements.<sup>259</sup>

USCIS agrees that clarity regarding the length and applicability of automatic extensions is important. DHS is aware of the ongoing difficulties in determining when a facially expired EAD has been automatically extended and has ensured that this rule clearly delineates these requirements. In addition, this rule may reduce confusion about the length of automatic extensions: instead of having a baseline automatic extension of 180 days and then periodic TFRs with longer extensions, this rule takes a more uniform approach. USCIS is also revising receipt notice language to provide more clarity to individuals who are eligible for an automatic extension, their employers, and benefit-granting agencies who review their documentation.

On July 24, 2024, USCIS updated its website to more clearly outline the requirements for an automatic EAD extension. As part of these changes, USCIS updated the automatic extension eligibility calculator. USCIS believes the

clarification made available on its website and to the calculator at <https://www.uscis.gov/eadautoextend> may help individuals with an automatically extended EAD and a Form I-797C demonstrate this extension to agencies and employers tasked with verifying immigration status and employment eligibility if there is confusion when the individual presents a facially expired EAD. The EAD calculator is not a substitute for a registered agency's use of SAVE.

DHS disagrees with the commenter's concern that it will become more laborious for USCIS to track employment authorization or that this rule will dilute good data at the case level. While DHS acknowledges that there is work to do to improve the ability of DHS processes and systems to verify and provide accurate immigration status information, DHS is working on those improvements, which will reduce the number of applications that remain pending and eligible for automatic extensions. It remains DHS's goal to eliminate the adjudicative backlog for the EAD categories eligible for the up-to 540-day automatic extension, and DHS will continue to work toward that goal. Making the increase to the automatic extension period permanent is not an attempt to carry a permanent backlog; rather, it reflects DHS's recognition that unforeseeable circumstances may arise that periodically and temporarily cause backlogs. As for data at an individual case level, the commenter's concern is unclear, but DHS believes data will remain available and sufficient for tracking purposes. DHS will remain able to track the total number of applications filed, the EAD categories under which they are filed, and the number of applications that remain pending, among other metrics.

### 3. Alternative Actions

*Comment:* Multiple submissions recommended actions to pursue as alternatives to, or in conjunction with, the 2024 TFR. Commenters suggested that DHS consider all options to eliminate barriers to obtaining and retaining employment authorization for noncitizens; conduct a "root cause analysis" for work authorization delays; and consider expanding the categories for which work authorization could be granted incident to status.

Another commenter expressed support for measures that would allow noncitizens to apply for an EAD based on a pending asylum application earlier than currently allowed under 8 CFR 208.7(a). Another commenter recommended that DHS eliminate the

asylum clock entirely and grant (c)(8) EADs 180 days after receipt of the asylum application. The commenter remarked that the asylum clock is unfair to noncitizens, as well as an unnecessary use of USCIS resources, which would be better spent on substantive adjudications rather than on administering the EAD clock.

Another commenter emphasized that if Congress were to transition USCIS from an agency that is primarily fee-funded to one that supplements its revenue via appropriations, USCIS could increase and improve its resources and operate under better conditions, which would enable USCIS to timely process pending renewal EAD applications.

*Response:* Although some of these proposals may further or be related to the overarching goals identified in the 2024 TFR, many of them are far afield from the specific proposals DHS included in the 2024 TFR. Consistent with the 2024 TFR, DHS has decided to "permanently lengthen the period of the automatic extension period to up to 540 days for employment authorization and/or EAD validity for eligible renewal applicants."<sup>260</sup> DHS has nonetheless reviewed comments suggesting additional further actions, and may pursue such changes on a regulatory or subregulatory basis in the future.

DHS notes that the 180-day waiting period for the asylum clock is statutory,<sup>261</sup> and would require Congressional action to eliminate it entirely. Similarly, changes to funding mechanisms for USCIS would be in the province of Congress.

*Comment:* A commenter recommended that DHS streamline Form I-765, Application for Employment Authorization, to reduce confusion and delays for applicants and increase review efficiency for USCIS. The commenter suggested accepting the shorter 2017 version of the form. The legal services provider added that some questions on the current iteration of the form are not necessary to adjudicate work permit eligibility.

*Response:* USCIS periodically reviews all its forms, including the Form I-765, for legal sufficiency, accuracy, and to ensure that only the information necessary for adjudicating the form is being collected. All of USCIS' forms are reviewed by the Office of Management and Budget (OMB) to ensure compliance with these factors. The Form I-765 was most recently modified by USCIS and approved by OMB on August 23,

<sup>258</sup> See DHS, USCIS, *USCIS Redesigns Green Card and Employment Authorization Document* (Jan. 30, 2023), <https://www.uscis.gov/newsroom/news-releases/uscis-redesigns-green-card-and-employment-authorization-document> (last reviewed Nov. 6, 2024).

<sup>259</sup> 6 CFR 37.13(b)(1).

<sup>260</sup> See 2024 TFR, 89 FR at 24628.

<sup>261</sup> See INA sec. 208(d)(2), 8 U.S.C. 1158(d)(2).

2024.<sup>262</sup> While it is possible that not all of the questions on Form I–765 apply to every applicant, every question on the form is necessary.

Regarding the possibility of confusion, USCIS publishes detailed guidance on Form I–765 on its website at [www.uscis.gov/i-765](http://www.uscis.gov/i-765). This includes resources such as filing tips, checklists, a fee calculator, and other useful information.

*Comment:* A legal services provider suggested ways DHS and USCIS may make the public comment process for future rules more accessible, including by translating requests for comment into multiple languages and accepting comments in languages other than English. The commenter stated that this would be consistent with USCIS’ mission statement of “uphold[ing] America’s promise as a nation of welcome and possibility with fairness, integrity, and respect for all we serve”<sup>263</sup> and DHS’s Language Access Plan.<sup>264</sup>

*Response:* The process of submitting comments to future **Federal Register** documents is beyond the scope of this rule. Information about language access efforts at USCIS can be found at the USCIS Language Access Plan web page<sup>265</sup> and at the USCIS Multilingual Resource Center.<sup>266</sup>

#### 4. Regulatory Impact Analysis

*Comment:* A commenter provided remarks on the economic impacts of the TFR, in line with the impacts described in the TFR’s Regulatory Impact Analysis (RIA), stating that the TFR would stabilize labor income for affected renewal EAD applications while creating opportunities.<sup>267</sup> The commenter said that the TFR would serve as a “proxy” for preventing transfers from EAD holders to others in the workforce or yielding cost savings for employers as a result of preserved

productivity and continuity of business operations. The commenter additionally remarked on the “significant” potential financial benefits of the rule, including DHS’s estimate of \$3.1 billion in potential preserved employment taxes.

The commenter added that the ability to maintain employment authorization without disruption would benefit individuals, with estimated savings based on recently lapsed EADs and labor earnings. The commenter wrote that impacted individuals would benefit from cost savings related to job search and acquisition, and stabilized earnings would prevent burdens on support networks.

Finally, the commenter concluded that the TFR would not cause adverse labor market disruptions and would prevent adverse impacts from wide-scale lapses in employment authorization. The commenter said that while the TFR’s RIA did not include estimates for stabilized earnings beyond the EAD lapse duration, they expressed confidence that they would show increased saved earnings estimates.

*Response:* The estimated EAD lapse duration was based on an expectation of conditions should the EAD renewal automatic extension not be extended to up to 540 days. The TFR’s RIA estimated costs in absence of the rule, which is why it did not include estimates for stabilized earnings beyond the estimated EAD lapse duration.

#### V. Regulatory Changes: 8 CFR 274a.2(b)(1)(vii), 8 CFR 274a.13(d)(1), (d)(3) and 8 CFR 274a.13(d)(6); Authority Citation

##### A. Modifying 8 CFR 274a.2(b)(1)(vii)

With this final rule, DHS is amending 8 CFR 274a.2(b)(1)(vii) by removing the numerical reference to the up to 180-day period and replacing it with language that simply refers to the automatically extended validity period under 8 CFR 274a.13(d). This rule does not modify the current reverification requirements an employer must follow for Form I–9, Employment Eligibility Verification, at 8 CFR 274a.2(b)(1)(vii) that apply to automatic extensions. Therefore, to complete Form I–9 for new employment, the employee and employer should use the extended expiration date to complete Sections 1 and 2 of the Form I–9 and reverify once the automatic extension period expires. For current employment, the employer should update the previously completed Form I–9 to reflect the extended expiration date based on the automatic EAD extension while the renewal is

pending and reverify once the automatic extension expires.<sup>268</sup>

DHS is also modifying the cross references to 8 CFR 274a.13(d) in this section by eliminating the section symbol before 274a.13(d) in that paragraph, and replacing the citation with the full citation, *i.e.*, 8 CFR 274a.13(d). DHS believes that using full citations in regulatory text clarifies the regulatory text for the public.

##### B. Revising 8 CFR 274a.13(d)(1) and (d)(3), and Removing (d)(5) and (d)(6)

With this final rule, DHS is permanently increasing the automatic extension period for employment authorization and/or EAD validity, which is up to 180 days in the current 8 CFR 274a.13(d)(1), to a period of up to 540 days. The extension will be available to renewal applicants who are eligible to receive an automatic extension and who properly file a renewal EAD application on or after January 13, 2025 and otherwise meet the requirements of 8 CFR 274a.13(d).

DHS also acknowledges that the requirements under this provision are complicated and have caused confusion among some employees, employers, and benefit-granting agencies in the years since these provisions have been in effect as to whether the automatic extension only applies to documents about to expire or also to expired documents. To address this concern, DHS is amending 8 CFR 274a.13(d)(1) to specify that for eligible renewal EAD applications, both EADs with validity periods that are about to expire (“expiring”) and those with validity periods that have already passed (“expired”) can be automatically extended<sup>269</sup> as long as all the requirements of 8 CFR 274a.13(d)(1) are met. Under the current 8 CFR 274a.13(d)(1), one of the requirements is having a properly filed renewal EAD application that USCIS received before the expiration date on the face of the EAD, or for TPS-related renewal EAD applications, during the filing period described in the applicable **Federal Register** notice regarding procedures for obtaining TPS-related EADs.<sup>270</sup> DHS is amending 8 CFR 274a.13(d)(1)(i) to

<sup>262</sup> See Executive Office of the President, Office of Management and Budget, Office of Information and Regulatory Affairs, *Information Collection Review—OIRA Conclusion Ref. No. 202408–1615–005*, [https://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=202408-1615-005](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202408-1615-005) (last visited on Oct. 23, 2024).

<sup>263</sup> DHS, USCIS, *Mission and Core Values*, <https://www.uscis.gov/about-us/mission-and-core-values> (last visited on Oct. 28, 2024).

<sup>264</sup> DHS, *Language Access Plan* (Nov. 2023), [https://www.dhs.gov/sites/default/files/2023-11/23-1115\\_dhs\\_updated-language-access-plan.pdf](https://www.dhs.gov/sites/default/files/2023-11/23-1115_dhs_updated-language-access-plan.pdf) (last visited on Oct. 28, 2024).

<sup>265</sup> DHS, USCIS, *USCIS Language Access Plan*, <https://www.uscis.gov/tools/multilingual-resource-center/uscis-language-access-plan> (last updated Apr. 14, 2024).

<sup>266</sup> DHS, USCIS, *Multilingual Resource Center* <https://www.uscis.gov/tools/multilingual-resource-center> (last visited Oct. 28, 2024).

<sup>267</sup> See Table 3—Summary of Impacts, 2024 TFR, 89 FR at 24655–24656.

<sup>268</sup> DHS, USCIS, *M–274, Handbook for Employers, 5.2 Temporary Increase of Automatic Extension of EADs from 180 Days to 540 Days* (last reviewed/updated Apr. 8, 2024), <https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/50-automatic-extensions-of-employment-authorization-and-or-employment-authorization-documents-eads-in/52-temporary-increase-of-automatic-extension-of-eads-from-180-days-to-540-days> (last visited Aug. 4, 2024).

<sup>269</sup> See new 8 CFR 274a.13(d)(1).

<sup>270</sup> See current 8 CFR 274a.13(d)(1)(i).

clarify that for renewal of TPS-related EADs, the automatic EAD extension provision applies to individuals who file their renewal EAD application during the re-registration period described in the applicable **Federal Register** notice. As explained in the preamble to the AC21 Final Rule,<sup>271</sup> this means that the TPS-related renewal EAD application can be filed after the facial expiration date of the EAD because the re-registration period may extend beyond the validity period of the EAD as indicated on the face of the document.<sup>272</sup>

DHS anticipates that this clarification in the regulatory text will better guard against a circumstance where an employer or benefit-granting agency rejects an EAD that is the subject of a valid automatic extension, if presented with an eligible Form I-797C receipt notice. This should help employers avoid rejecting acceptable documents and possibly violating the anti-discrimination provisions under 274B of the INA, 8 U.S.C. 1324b.<sup>273</sup>

In conjunction with this change, DHS is making another clarifying change, by further amending 8 CFR 274a.13(d)(1) to state exactly when the automatic extension begins. Specifically, the amendment clarifies that the first day of the up to 540-day automatic extension is the day after the expiration date on the face of the EAD. This change will help stakeholders know where to find the expiration date information and when to begin calculating the new EAD validity end date.<sup>274</sup> As indicated in comments to the 2024 TFR, some stakeholders have expressed confusion regarding multiple possible automatic EAD extensions. This amendment clarifies that the up to 540-day extension begins on the day after the expiration date indicated on the face of the EAD. To accommodate the new wording, DHS is also moving information related to filing the renewal request into 8 CFR 274a.13(d)(1)(i).

Finally, to avoid confusion, and to ensure continued availability of the temporary extension granted in the 2022 and 2024 TFRs, DHS is incorporating and consolidating the content of temporary paragraphs (d)(5) and (d)(6) into (d)(1) and removing paragraphs (d)(5) and (d)(6).

Eligible applicants who had a properly filed and adjudicated renewal EAD application before May 4, 2022, had their employment authorization and/or EAD automatically extended for

a period not to exceed 180 days. DHS amended the regulatory text so that paragraph (d)(1) continues to reflect this period, and to ensure clarity for Form I-9, Employment Eligibility Verification, purposes.<sup>275</sup>

As described in the 2022 TFR, 8 CFR 274a.13(d)(5) provided an increased extension period of up to 540 days to eligible renewal applicants who had a timely filed EAD application pending during an 18-month period beginning on or after May 4, 2022, and ending at the end of October 26, 2023. The increased automatic extension period applied to eligible renewal EAD applicants who timely filed their EAD applications on or before the last day of the 18-month period.<sup>276</sup> Additionally, for eligible renewal EAD applicants who had timely filed their renewal EAD applications on or before May 4, 2022, but who were no longer within their 180-day automatic extension period, 8 CFR 274a.13(d)(5) provided, in the interest of fairness, that such renewal applicants automatically resumed employment authorization and/or the validity of their EADs beginning on the effective date of the 2022 TFR, May 4, 2022, and up to 540 days from the expiration of their employment authorization and/or EAD.<sup>277</sup> For renewal applications filed on or after October 27, 2023, the automatic extension period reverted to 180-days.

Because of continuing delays in adjudication, DHS published another temporary final rule on April 8, 2024, to avert possible and imminent harm to a large number of renewal EAD applicants.<sup>278</sup> Rather than extending the automatic extension provision of paragraph (d)(5), DHS created new 8 CFR 274a.13(d)(6). Under this provision, DHS increased the automatic extension period for employment authorization and/or EAD validity of up to 180 days to a period of up to 540 days for renewal applicants eligible to receive an automatic extension who properly filed a renewal EAD application on or after October 27, 2023, and pending on or after April 8, 2024 and any eligible applicant who files a renewal EAD

application during the 540-day period beginning on or after April 8, 2024 and ending September 30, 2025. As described in the 2024 TFR, and absent this rulemaking, the automatic extension of employment authorization and/or EAD validity would have reverted to the up to 180-day period for those eligible applicants who would have timely filed renewal EAD applications after September 30, 2025.<sup>279</sup>

Because DHS has determined that there is a need to permanently increase the automatic extension period to up to 540 days going forward, and because maintaining multiple overlapping automatic extension periods in the regulations is confusing to the public, DHS believes it is best to simplify the regulatory text. DHS has determined that it would be best to incorporate the content of paragraphs (d)(5) and (d)(6) into paragraph (d)(1), and that paragraphs (d)(5) and (d)(6) should be removed from the CFR. This approach reduces, and thus, simplifies the regulatory text while maintaining the 2022 and 2024 TFR principles applicable to the automatic extension for certain renewal EADs for the public and for purposes of Form I-9 requirements. Correspondingly, new 8 CFR 274a.13(d)(1) incorporates the automatic extensions provided by the 2022 TFR in 8 CFR 274a.13(d)(5) and the 2024 TFR in 8 CFR 274a.13(d)(6) by clearly outlining that for renewal applications pending on May 4, 2022 or properly filed on or after May 4, 2022, the validity period of an expiring employment authorization and/or EAD is automatically extended for an additional period not to exceed 540 days from the expiration date on the face of the EAD. The amendments are effective on January 13, 2025.

In the 2022 and 2024 TFRs, DHS provided that 8 CFR 274a.13(d)(5) and (d)(6) would remain in the CFR for an additional 720 days after the 540-day period. Therefore, 8 CFR 274a.13(d)(5) was scheduled to remain in the CFR until October 15, 2025,<sup>280</sup> and 8 CFR 274a.13(d)(6) was scheduled to remain in the CFR until September 20, 2027.<sup>281</sup> DHS previously decided to retain the provisions for that length to ensure that renewal applicants who are already within their up to 540-day extension period as of the end of the effective date of the provisions, would not get cut off from any remaining employment authorization and/or EAD validity that is over 180 days, but instead, would be

<sup>275</sup> See 8 CFR 274a.13(d)(5).

<sup>276</sup> See 8 CFR 274a.13(d)(5); 87 FR 26614, 26631 (May 4, 2022).

<sup>277</sup> See 8 CFR 274a.13(d)(5); 2022 TFR, at 87 FR 26614, 26631 (May 4, 2022).

<sup>278</sup> DHS estimated at the time that without the 2024 TFR, approximately 800,000 renewal EAD applicants would have been in danger of having their applications remain pending beyond the 180-day automatic extension period, resulting in applicants losing employment authorization and/or EAD validity in the approximately 2-year period beginning May 2024 because of USCIS processing delays and through no fault of their own. See 89 FR 24628, 26828 (Apr. 8, 2024).

<sup>279</sup> See 89 FR 24628, 24649 (Apr. 8, 2024).

<sup>280</sup> See 87 FR 26614, 26631 (May 4, 2022).

<sup>281</sup> See 89 FR 24628, 24649 (May 4, 2022).

<sup>271</sup> See 81 FR 82398, 82455 (Nov. 18, 2016).

<sup>272</sup> See new 8 CFR 274a.13(d)(1)(i).

<sup>273</sup> See INA 274B(a)(6), 8 U.S.C. 1324b(a)(6).

<sup>274</sup> See new 8 CFR 274a.13(d)(1).

able to take full advantage of the 540-day period.<sup>282</sup> By incorporating the content of paragraphs (d)(5) and (d)(6) into (d)(1), there is no longer a need for the provisions to be in the CFR for that length of time. In fact, DHS believes that having multiple overlapping provisions likely will create additional confusion. Therefore, 8 CFR 274a.13(d)(5) and (d)(6) will be removed as of January 13, 2025. DHS is also clarifying the abbreviation EAD used in (d)(1)(i).

Notwithstanding the decision to consolidate these three provisions for clarity, as discussed in Part I.D of this preamble, DHS intends that the provisions remain severable from each other to the maximum extent possible. The three automatic extension provisions consolidated in this rule—(1) the temporary automatic extension originally promulgated in the 2022 TFR, (2) the temporary automatic extension originally promulgated in the 2024 TFR and then finalized in this rule, and (3) the permanent automatic extension promulgated in this rule—relate to different populations, arise from different factual circumstances, and serve different purposes. Accordingly, DHS intends that if a court were to hold, for instance, that the consolidated provision is invalid as to the population covered by the permanent automatic extension, DHS would nonetheless intend for the rule to remain in effect as to those covered by the 2022 TFR and the 2024 TFR. By the same token, if a court were to hold that any aspect of the automatic extension is invalid as to a particular person or circumstance (such as a particular class of EAD renewal applicants), DHS would intend that the automatic extension still be available to the remaining persons and circumstances covered by this provision.

Finally, DHS is also amending 8 CFR 274a.13(d)(3) by making conforming edits and by replacing the up to 180-day reference with a reference to the up to 540 days automatic extension period. To avoid confusion, DHS is amending the provision by clearly distinguishing between EAD renewal requests filed and adjudicated before May 4, 2022, and renewal requests pending on or properly filed on or after May 4, 2022. Therefore, similar to the 180-day automatic extension period, the increased automatic extension period of up to 540 days established in 8 CFR 274a.13(d)(1) for EAD renewal requests pending on, or properly filed on or after May 4, 2022 by this final rule generally will automatically terminate the earlier of up

to 540 days after the expiration date of the EAD or upon issuance of notification of a denial on the renewal EAD request. DHS is also amending the provision by adding clarifying text that eligible applicants who received an up to 180-day automatic extension period because they properly filed and USCIS adjudicated the renewal EAD application before May 4, 2022, had the period terminated the earlier of up to 180 days after the expiration date of the Employment Authorization Document (Form I-766) or upon issuance of notification of a decision denying the renewal request. The changes are effective on January 13, 2025. This rule will not make any other changes to 8 CFR 274a.13(d)(3).

#### C. Revising Authority Citations for 8 CFR Part 274a

On January 31, 2024, DHS published the U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements final rule adjusting certain immigration and naturalization benefit request fees.<sup>283</sup> As part of that rule, DHS revised the authority citations for 8 CFR part 274a.<sup>284</sup> In doing so, DHS inadvertently removed the reference to 8 U.S.C. 1105a.<sup>285</sup> In this final rule, DHS is amending the authority citation for 8 CFR part 274a by adding the reference to 8 U.S.C. 1105a again. Additionally, as outlined elsewhere in this final rule,<sup>286</sup> sections 208, 214, and 244 of the INA, 8 U.S.C. 1158, 1184, and 1254a, also serve as sources of statutory authority for employment authorization. DHS is therefore further amending the authority citation by adding these provisions. These revisions are technical in nature and do not substantively affect noncitizens seeking employment authorization.

<sup>283</sup> See 89 FR 6194 (Jan. 31, 2024) (“2024 Fee Rule”) (effective April 1, 2024).

<sup>284</sup> See 89 FR 6194, 6399 revising the authority citation for part 274a). This resulted in the removal of 8 U.S.C. 1105a, Public Law 110-229, 122 Stat. 854, as well as Public Law 115-218, 132 Stat. 1547 from the authority citation for 8 CFR part 274a.

<sup>285</sup> DHS removed the references to Public Law 110-229, 122 Stat. 854, as amended by Public Law 115-218, 132 Stat. 1547, because the affected sections are codified at 48 U.S.C. 1806. Therefore, as part of the 2024 Fee Rule, DHS revised the authority citation for 8 CFR part 274a to only reference 48 U.S.C. 1806. See 89 FR at 6399.

<sup>286</sup> See section II.A of this preamble, Legal Authority; see also 89 FR 24628, 24630 (Apr. 8, 2024).

## VI. Statutory and Regulatory Requirements

### A. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Office of Management and Budget (OMB) has designated this rule a “significant regulatory action” as defined under section 3(f)(1) of E.O. 12866, as amended by Executive Order 14094, because its annual effects on the economy relative to a without-TFR baseline are estimated to exceed \$200 million in any year of the analysis. Accordingly, OMB has reviewed this rule.

As is detailed earlier in the preamble,<sup>287</sup> DHS has previously issued two temporary final rules to help protect certain applicants from suffering a lapse of employment authorization and/or documentation and related consequences solely because of USCIS processing delays.

This final rule amends existing DHS regulations to permanently increase the automatic extension period applicable to such expired or expiring EADs<sup>288</sup> and, for noncitizens who are not employment authorized incident to status, also the attendant employment authorization, for certain applicants who have timely filed their renewal EAD applications from up to 180 days to up to 540 days. This final rule will be effective January 13, 2025.

In the below analysis, DHS evaluates the effects of (1) permanently changing the up to 180 days automatic extension to an up to 540 days automatic extension period as measured against a no-action baseline (*i.e.*, the effects of the rule as measured against a baseline that assumes the existence of the 2022 and

<sup>287</sup> See section III. Purpose and Discussion of the Final Rule.

<sup>288</sup> <https://www.uscis.gov/green-card/green-card-processes-and-procedures/employment-authorization-document>. Forms I-766 or EADs.

<sup>282</sup> See 87 FR 26614, 26631 (May 4, 2022); see 89 FR 24628, 24649 (Apr. 8, 2024).

2024 TFRs)<sup>289</sup> and (2) changing the up to 180 days automatic extension to an up to 540 days automatic extension period (*i.e.*, the effects of the rule as measured against a baseline condition that assumes the 2022 and 2024 TFRs had not been issued).

#### 1. No Action Baseline—Effects of This Final Rule

Currently, under the 2022 and 2024 TFRs, applicants who properly file their EAD renewals by September 30, 2025, will receive an automatic extension period of up to 540 days instead of up to 180 days. Without any further action, the automatic extension period for applications properly filed on or after October 1, 2025, would revert to 180 days. Accordingly, the effects of this final rule—which makes permanent the up to 540-day automatic extension period—would begin when the filing period for the 2024 TFR is scheduled to expire on October 1, 2025.

Part III of this preamble discusses the multiple unpredictable circumstances, which resulted in the need for the 2022 and 2024 TFRs.<sup>290</sup> For the 2022 TFR, processing times for EAD applications had increased due to operational challenges that were exacerbated by the emergency measures USCIS had to employ to maintain its operations throughout the COVID-19 public health emergency, combined with a sudden increase in EAD application filings and litigation resulting in the enjoining of the 2020 Fee Rule.<sup>291</sup> In 2024, the lengthy EAD processing times were primarily due to a substantial increase in the number of initial EAD applications based on pending asylum applications (C08) and litigation that resulted in USCIS being required to process initial EAD applications for asylum applicants within 30 days of filing.<sup>292</sup> In addition, the allocation of USCIS personnel to assist with historically high levels of encounters at the southwest land border between the ports of entry also contributed to long EAD processing times.<sup>293</sup>

While the purpose of the 2022 TFR and the 2024 TFR was to address

imminent large-scale lapses in employment authorization and/or documentation, the purpose of this final rule is to provide a long-term solution to mitigate the potential for unpredictable circumstances to significantly increase renewal EAD application processing times that would require future urgent action to avoid such large-scale lapses in employment authorization and/or documentation solely because of USCIS processing delays. Based on the recent history described in detail in Part III of this preamble, DHS anticipates that this rule is warranted to reduce the probability that large numbers of applicants eligible for automatic extensions of their expired or expiring EADs will experience gaps in employment authorization and/or EAD validity.<sup>294</sup> This final rule may therefore provide for greater earnings stability for individuals and maintain continuity of business operations for their employers.

When there is not a significant backlog and processing times are 180 days or less, then this rule has no quantifiable impacts as the EAD renewal applications would be adjudicated within the existing 180-day automatic extension period. Instead, it would simply serve to reduce uncertainty for noncitizens and employers, without which there would be an unknown risk of loss of work authorization. It also reduces uncertainty about a need for future temporary rules to address unforeseen circumstances.

In the scenario an unforeseen circumstance causes processing times to extend beyond the current 180-day automatic extension period and the potential for lapses in renewal EADs, the rule results in benefits and cost savings, relative to those who without such action would realize a cost.<sup>295</sup>

To quantify the potential benefit and cost savings impacts of this final rule,

<sup>294</sup> As stated earlier in the preamble, DHS is applying this rule to all renewal EAD application categories eligible for automatic extension pursuant to 8 CFR 274a.13(d), even though some of these categories currently experience processing times that do not raise a risk of the applicant experiencing a lapse in employment authorization or documentation. Ninety percent of current pending EAD automatic extension applications fall within the C08, C09, and C10 categories. DHS has made this decision because it has determined that it would not be operationally practical for USCIS to implement a different approach; making distinctions among categories would cause confusion among employers and employees; and backlogs and processing times may yet increase for these other categories.

<sup>295</sup> Individuals would benefit from being able to maintain their employment authorization and, by extension, their employment, without disruption. There would be cost savings to employers in terms of continuity of business operations due to the worker not being separated.

DHS would need a basis for estimating how many cases would lapse due to future unknown backlogs, which could occur at unknown time intervals. While in the short-run, DHS has data about EADs that are expiring through June 2029, it lacks data to accurately assess evolving circumstances and unknown factors that could cause potential backlogs.<sup>296</sup> These factors vary and include allocation constraints on adjudication resources and unexpected fluctuation in the volume of EAD filings. Evidence of the difficulty in producing these forecasts can be found in the changes in the number of EADs that USCIS estimated would lapse without the 2024 TFR based on circumstances in an October 2023 analysis as compared to the more recent July 2024 analysis.<sup>297</sup> Therefore, DHS is unable to forecast with certainty whether, how often, and with respect to how many applications processing times may extend beyond 180 days and how severe the backlogs may become. Accordingly, given the large amount of uncertainty around these factors, DHS is unable to produce a tenable population estimate for the future population—beyond the 2024 TFR—that may benefit from this permanent change to the automatic extension period.<sup>298</sup>

<sup>296</sup> With the 2024 TFR being effective for some applicants until September 2027, approximately 1.8 million approved EADs with an eligibility category in the automatic extension classifications (all classifications, including TPS) are facing expiration between October 2027 and June 2029 (data as of July 1, 2024). About 89% of the 1.8 million are the C08 (60%) and the C09 (29%) classifications.

<sup>297</sup> As noted earlier in this preamble, in the 2024 TFR, DHS projected that approximately 260,000 renewal EAD applicants may lose at least 1 day of employment authorization and/or documentation despite the 540-day automatic extension period. 89 FR 24628, 24647 (Apr. 8, 2024). This projection was based on the conditions in place at the time of the analysis in late 2023. That projection therefore could not take into account the complete effect of operational and policy changes described in the TFR, combined with any future changes and operational shifts (such as hiring additional officers or implementing technological improvements for processing efficiency). However, based on a July 2024 analysis, DHS now projects that approximately 46,000 renewal EAD applicants may lose at least 1 day of employment authorization under the 2022 and 2024 TFRs, between and including July 2024 and March 2027. The decrease in projection is primarily attributed to an increase in completions during the time period between the 2024 TFR analysis (October 2023) and this analysis (July 2024), specifically for C08 and C09 renewal EAD filings.

<sup>298</sup> Based on the positive impacts to the populations affected by the 2022 and 2024 TFRs, we can deduce that this final rule will have the same or similar effect on the future population in terms of reducing potential renewal EAD lapses. In other words, without this final rule, we would expect that any future population expirations would have impacts on earnings and labor turnover costs relative to those avoided by the 2022 and 2024 TFRs.

<sup>289</sup> OMB Circular A-4, states “the benefits and costs of a regulation are generally measured against a no-action baseline: an analytically reasonable forecast of the way the world would look absent the regulatory action being assessed.” Nov. 9, 2023, <https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf> (last visited September 26, 2024).

<sup>290</sup> See Part III. Purpose and Discussion of the Final Rule, of this preamble.

<sup>291</sup> See Section III.A. Circumstances Resulting in the 2022 Temporary Final Rule, of this preamble.

<sup>292</sup> See Section III.B. Circumstances Resulting in the 2024 Temporary Final Rule, of this preamble.

<sup>293</sup> See Section III.B. Circumstances Resulting in the 2024 Temporary Final Rule, of this preamble.

2. Without TFR Baseline—Effects of the 2022 and 2024 TFRs

i. Introduction

In the absence of this rule, and the hypothetical absence of the 2022 TFR and the 2024 TFR, USCIS estimates that between approximately 306,000 and 468,000 renewal EAD applicants would experience a lapse in employment authorization and/or employment authorization documentation between this rule’s July 2023 and March 2026 period of analysis.

As of the current data analysis (data as of July 1, 2024), despite the temporary extension up to 540 days under the 2022 TFR and 2024 TFR and the permanent extension up to 540 days in this final rule, about 46,000 renewal EAD applicants during the period analyzed may still experience a lapse<sup>299</sup> beginning in July 2024 assuming status quo conditions.<sup>300</sup> However, as

discussed in Part IV.K.2 of this preamble, Increase the Automatic Extension Period to 730 Days, USCIS has taken steps to address this population of 46,000 applicants operationally.

Because USCIS cannot forecast the future population with precision, we present a baseline population that could range from 306,000 to 468,000. After applying an adjustment for current unemployment conditions in the economy (described in detail in the ensuing analysis section), we arrive at an adjusted population that could range from 293,000 to 449,000.<sup>301</sup>

DHS has prepared two types of quantified estimates of the impacts that could be generated by this final rule applicable to the adjusted population. This rule will prevent the majority of EAD holders from incurring a loss of earnings (“stabilized earnings”) because of USCIS processing delays for renewal

EAD applications, as under this rule there will be no disruption to their earnings due to a lapsed EAD. This rule will also generate labor turnover cost-savings to businesses that employ the EAD holders, as under this rule there would not be a disruption to the majority of EAD holders’ employment authorization and/or document validity. Additionally, to the extent this rule prevents affected EAD holders’ jobs from going unfilled, there will be fewer reductions in tax transfers from businesses and employees to the Federal Government.<sup>302</sup>

Due to substantial variation in the inputs utilized to estimate the impacts, there is a very wide range in which they could fluctuate. These impacts are summarized in Table 8, where the monetized figures represent the forecast expected value (which is the mean of trial-based simulations) discounted at 2 percent.

TABLE 8—SUMMARY OF IMPACTS  
[\$2023 Dollars, FY 2023 through FY 2027]

*EAD Holder Earnings Preserved (“Stabilized Earnings”):*

- *Entities directly affected:* Individual EAD holders.
- *Population:* maximum 293,000 to 449,000 individuals with renewal EADs.
- *Monetized present value estimate (2 percent):* \$10.0 billion.
- *Type:* Stabilized labor income to affected renewal EAD applications; this labor income is a proxy for either prevented transfers from EAD holders to others in the workforce or cost savings to employers for preserved productivity, depending on if employers would have been able to easily find replacement labor if the affected EAD holders’ employment authorization had lapsed.
- *Summary:* Individuals would benefit from being able to maintain their employment authorization and, by extension, their employment, without disruption; DHS estimated these savings based on projected EAD lapse durations and labor earnings, both of which vary within a range.
- *Potential preserved employment taxes:* \$1.1 billion (Present Value, 2-percent discount rate); actual amount will depend on how easily businesses would have been able to find replacement labor if the affected EAD holders’ employment authorization had lapsed.

*Employer Labor Turnover Cost Savings:*

- *Entities directly affected:* businesses that employ the EAD holders.
- *Population:* Possibly 25,500 to 39,000 employers.
- *Monetized present value estimate (2 percent):* \$3.5 billion.
- *Type:* Cost-savings.
- *Summary:* There would be cost savings to employers in terms of continuity of business operations due to the worker not being separated; DHS estimated these savings based on information applicable to turnover costs relevant to employee annual earnings, both of which vary within a range.

*Other Impacts Considered:*

- Individuals impacted would likely benefit from cost-savings accruing to not having to incur the direct costs and some related costs associated with searching for and obtaining a new job once their renewal EAD that lapsed is eventually approved.
- To the extent that individuals’ earnings will be maintained, burdens to their support network would be prevented.
- DHS does not expect adverse disruptions to the labor market, as the longer automatic extension period is intended to avoid disruptions to employment.
- DHS did not include estimates for stabilized earnings for any duration of continued unemployment that, without the longer automatic extension period, EAD holders might have experienced beyond their EAD lapse duration. Inclusion of such additional time would increase the estimates of saved earnings.
- Avoid opportunity costs to businesses for having to choose the next best alternative to employment of the affected renewal EAD applicant. USCIS does not know if the replacement hire in a next best alternative scenario would have been a comparable substitute (*i.e.*, a productivity or profit charge to employers).
- Prevent adverse impacts on businesses and individuals resulting from the uncertainty associated with widescale lapses in employment authorization.

Some of the impacts of the longer automatic extension period depend on whether businesses would have been able to find replacement labor for the positions the affected renewal EAD

applicants would have lost if they had experienced a gap in employment authorization and/or employment authorization documentation. If businesses would have been able to find

replacement labor from the pool of the unemployed, the only monetized cost savings to society is for preventing costs resulting from labor turnover. If businesses would not have been able to

<sup>299</sup> Extensions beyond 540 days would likely reduce the number of EADs that would still lapse; however, this final rule opts for an up to 540-day extension, as discussed in the preamble and later in “Alternatives Considered.”

<sup>300</sup> The estimate of 46,000 renewal EAD applicants that may still experience a lapse is based on assumptions that renewal applicants will maintain the same filing behavior, operational efficiency and productivity will not change, and staffing levels and adjudication hours for EAD

renewals will remain unchanged. Please see “Background and Population” for more information. These 46,000 applicants filed include applicants affected by both the 2022 TFR and 2024 TFR: 21,000 covered by the 2022 TFR but have been pending at least 540 days after their EAD expiration date as well as an estimated 25,000 who received a 540-day automatic extension period under the 2024 TFR but who USCIS estimates will remain pending more than 540 days after their EAD expiration date absent any changes. Please see DHS

public comment responses in “Allow a Second 540-Day Automatic Extension Period for Noncitizens who Received the 2022 TFR Automatic Extension” and “Increase the Automatic Extension Period to 730 Days” in this preamble for more information.

<sup>301</sup> Calculations: 306,016 – (306,016 × 4.1%) = 293,469; 468,104 – (468,104 × 4.1%) = 448,912.

<sup>302</sup> This rule will also prevent a reduction in State and local tax revenue but that is not quantified in this analysis. Please see Table 10 for more information.

find replacement labor, the monetized cost savings would also include prevented lost productivity due to a lack of available labor. However, the impacts to the affected renewal EAD applicants do not depend on whether their employer can find replacement labor. The longer automatic extension period will prevent affected renewal EAD applicants from incurring a loss of earnings.

DHS estimates that stabilized earnings to renewal EAD applicants affected by the 2022 and 2024 TFRs over the FY 2023 through FY 2027 period of analysis ranges from \$0.5 billion to \$5.7 billion with a primary estimate of \$2.1 billion (annualized, 2 percent), depending on the wages and other compensation the renewal EAD applicants earn, the number of renewal EAD applicants affected, and the duration of the gap in employment authorization and/or employment authorization documentation that would occur without those rules.<sup>303</sup> DHS uses estimates of the stabilized earnings as a measure of either: (1) prevented transfers of this compensation from the affected population to others in the labor market; or (2) a proxy for businesses' cost savings from prevented lost productivity, depending on whether businesses would have been able to find replacement labor if employment authorization for affected renewal EAD applicants had lapsed.

DHS does not know what the next best labor alternative would have been for businesses had employment authorization lapsed for affected EAD holders. Accordingly, DHS does not know the portion of the overall effects of this rule that are transfers or costs savings. To begin, DHS describes the

<sup>303</sup> Lapse-duration accounted for approximately 77.0 percent of this range, wages accounted for 21.4 percent, and the population 1.6 percent. For more information, please see "Earnings impact to EAD holders."

two extreme scenarios, which provide the bounds for the range of effects.

*Scenario 1:* If, in the absence of an increase in the automatic extension period, all businesses would have been able to immediately find reasonable labor substitutes for the positions the renewal EAD applicants would have lost, businesses would have lost little or no productivity. Accordingly, over the period of analysis the TFRs prevent \$2.1 billion (primary estimate annualized, 2 percent) from being transferred from affected renewal EAD applicants to workers currently in the labor force (whom are not presently employed full time) or induced back into the labor force and this rule would result in \$0 cost savings to businesses for prevented productivity losses.

*Scenario 2:* Conversely, if all businesses would have been unable to within the period of analysis find reasonable labor substitutes for the position the EAD holder filled, then businesses would have lost productivity. Accordingly, \$2.1 billion is the estimated monetized cost savings for prevented productivity losses and \$0 is prevented from being transferred from affected renewal EAD applicants to replacement labor. Because under this scenario businesses would not have been able to find replacement labor, the action may also result in additional cost savings to employers for prevented profit losses; and further, may also prevent a reduction in tax transfer payments from businesses and employees to the government. DHS has not estimated all potential tax effects but notes that stabilized earnings of \$2.1 billion would have resulted in employment tax losses to the Federal Government (*i.e.*, Medicare and Social Security) of \$0.2 billion (annualized, 2 percent).

In both scenarios, whether without an increase in the automatic extension period employers would have been able

to find replacement labor for affected renewal EAD applicants or not, DHS assumes that businesses would have incurred labor turnover costs for having to search for a replacement for affected renewal EAD applicants. Accordingly, DHS estimates preventing EAD lapses will also result in additional labor turnover cost savings to businesses ranging from \$0.06 billion to \$2.4 billion, with a primary estimate of \$0.7 billion (annualized, 2 percent) depending on the wages and other compensation the renewal EAD applicants earn, the number of renewal EAD applicants affected, and the replacement cost to employers.

Table 9 below summarizes these two scenarios and the primary estimate at a 2-percent discount rate. Because DHS does not know the overall proportion of businesses that would have been able to easily find replacement labor in the absence of the 2022 and 2024 TFRs, for DHS's primary estimate we assume that replacement labor would have been immediately found for half of all renewal EAD applicants and not found for the other half (*i.e.*, an average of the two extreme scenarios described above). However, May 2024 unemployment and job openings data indicate there are more jobs available than people looking for jobs.<sup>304</sup> Accordingly, we believe the impacts of the longer automatic extension period provided by the 2022 and 2024 TFRs will most likely skew towards Scenario 2, resulting in mostly cost savings for employers who would have been unable to fill the jobs of affected renewal EAD applicants without this change.

<sup>304</sup> Bureau of Labor Statistics data show that, as of May 2024, there were 0.8 unemployed persons per job opening. See U.S. Department of Labor, U.S. Bureau of Labor Statistics, "Number of unemployed persons per job opening, seasonally adjusted," [www.bls.gov/charts/job-openings-and-labor-turnover/unemp-per-job-opening.htm](http://www.bls.gov/charts/job-openings-and-labor-turnover/unemp-per-job-opening.htm) (last visited July 29, 2024).



TABLE 9—PRIMARY ESTIMATE—MONETIZED ANNUALIZED IMPACTS AT 2%  
[Millions]

Category	Description	Scenario 1: immediate replacement labor found for all affected EAD	Scenario 2: no replacement labor found for affected EAD over the period of analysis	Primary estimate: replacement labor found for half of affected EAD holders
<b>Transfers</b>				
Stabilized Earnings .....	Prevented compensation transfers from renewal EAD applicants to other workers.	\$2,114.1	\$0	\$1,057.1
Employment Taxes .....	Prevented reduction in employment taxes paid to the Federal Government.	0	223.1	111.6
<b>Cost Savings</b>				
Labor Turnover .....	Prevented labor turnover costs to businesses .....	734.8	734.8	734.8
Productivity .....	Prevented lost productivity to businesses (stabilized earnings used as a proxy).	0	2,114.1	1,057.1
Total Cost Savings .....		734.8	2,848.9	1,791.9

There are two important caveats to the monetized estimates. First, as the pending caseload evolves over the course of time that the 2022 and 2024 TFRs apply to, the pending count and therefore the total number of renewal EAD applications and individuals associated with them will change.<sup>305</sup> A resultant effect of the caseload changes is that as USCIS works through this backlog, the number of affected renewal EAD applicants and the durations for which renewal EAD applicants may experience a lapse in employment absent a change in the automatic extension period will likely vary from the durations modeled. As a result, DHS acknowledges the uncertainty in the above monetized impacts.

Second, DHS recognizes that non-work time performed in the absence of employment authorization has a positive value, which is not accounted for in the above monetized estimates.<sup>306</sup>

<sup>305</sup> Caseload changes can be the result of workforce hiring and/or officer re-assignments to other non-renewal EAD application workloads, as well as policy changes such as increasing certain EAD validity periods and improving processing efficiency through increased use of technological advancements.

<sup>306</sup> Boardman et al., *Cost-Benefit Analysis Concepts and Practice* (2018), p.152.

For example, if someone performs childcare, housework, home improvement, or other productive or non-work activities that do not require employment authorization, that time still has value. In assessing the burden of regulations to unemployed populations, DHS routinely assumes the time of unemployed individuals has some value.<sup>307</sup> The monetized estimates of the compensation an increase in the automatic extension period preserves are measured relative to a baseline in which individuals lose employment authorization and the associated income as a result of the problem the action seeks to address. The monetary value of the compensation an increase in the automatic extension period preserves are savings to the individual, but DHS has considered whether net societal savings may be lower than the sum of the preserved compensation to the individuals and whether a more accurate estimate of the net impact to society from losing employment authorization might take into account the value of individuals' non-work time,

<sup>307</sup> For regulatory analysis purposes, DHS generally assumes the value of time for unemployed individuals is at least the value of the Federal minimum wage.

even though this population has lost their authorization to sell their time as labor.

Due to the variety of values placed on non-work time, and the additional fact that this non-work time is involuntary, it is difficult to estimate the appropriate adjustment that DHS should make to preserved compensation to account for the social value of non-work time. Accordingly, DHS recognizes that the net societal savings may be somewhat lower than those reported below, but they are a reasonable estimate of the impacts to avoiding the costs of lapsed employment authorization.

Pursuant to OMB Circular A-4, DHS has prepared an A-4 Accounting Statement for the effects of changing the up to 180 days automatic extension to an up to 540 days automatic extension period (*i.e.*, the effects of the rule as measured against a baseline condition that assumes the 2022 and 2024 TFRs had not been issued).<sup>308</sup>

<sup>308</sup> OMB Circular A-4 (November 9, 2023) is available at <https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-4.pdf> (last viewed on July 29, 2024).

TABLE 10—OMB A-4 ACCOUNTING STATEMENT—WITHOUT TFR BASELINE  
 [\$ Millions, 2023; Period of analysis: FY 2023 through FY 2027]

Category	Primary estimate		Minimum estimate	Maximum estimate	Source citation (RIA, preamble, etc.)
<b>Benefits:</b>					
Monetized Benefits .....	2%	N/A	N/A	N/A	RIA.
Annualized quantified, but un-monetized, benefits .....	N/A		N/A	N/A	RIA.
Qualitative (unquantified) benefits .....	<ul style="list-style-type: none"> <li>• Avoiding a lapse in employment authorization and/or EAD validity for renewal EAD applicants may also prevent any monetary or other support that would have been necessary for the support network of affected EAD holders to transfer to affected EAD holders during such a period of unemployment.</li> <li>• Prevent affected individuals from incurring direct and indirect costs associated with looking for work.</li> </ul>				RIA. RIA.
<b>Costs:</b>					
Annualized monetized costs .....	2%	-\$1,791.9	-\$61.1	-\$8,172.6	RIA.
Annualized quantified, but un-monetized, costs .....	N/A		N/A	N/A	RIA.
Qualitative (unquantified) costs .....	<ul style="list-style-type: none"> <li>• Better ensure other cost savings of holding an EAD or employment will not be disrupted or subject to significant uncertainty because of USCIS processing delays, such as valid identity documents, or health insurance obtained through an employer.</li> <li>• Prevent adverse impacts on businesses that would result from required terminations for affected renewal EAD applicants, or the uncertainty associated with widescale lapses in employment authorization.</li> <li>• In cases where, in the absence of a change to the automatic extension period, companies cannot find reasonable substitutes for the labor the affected renewal EAD applicants have provided, affected businesses would also save profits from the productivity that would have been lost. In all cases, companies would avoid opportunity costs from having to choose the next best alternative to employment of the affected renewal EAD applicant.</li> </ul>				RIA.
<b>Transfers:</b>					
Annualized monetized transfers: "on budget" .....	2%	\$0	\$0	\$0	RIA.
From whom to whom? .....	N/A				N/A.
Annualized monetized transfers: stabilized earnings .....	2%	\$1,057.1	\$0	\$5,741.6	RIA.
From whom to whom? .....	Prevent compensation from transferring from affected renewal EAD applicants to other workers.				RIA.
Annualized monetized transfers: taxes .....	2%	\$111.6	\$0	\$605.8	RIA.
From whom to whom? .....	Prevent a reduction in employment taxes from companies and employees to the Federal Government (quantified). It would also prevent a reduction in income taxes from employees to Federal, State, and local governments (unquantified).				RIA.
Category	Effects				Source citation (RIA, preamble, etc.)
Effects on State, local, and/or tribal governments .....	Prevent a reduction in State and local tax revenue (unquantified). Also prevent potential reliance on State or local government-funded support services that may have been necessary with a gap in employment authorization (unquantified).				RIA.
Effects on small businesses .....	The 2022 and 2024 TFRs and this rule do not directly regulate small entities but have indirect cost-saving to small entities that may employ affected renewal EAD applicants. Such businesses will avoid the costs for labor turnover and loss of productivity and profits had they not been able to immediately fill the labor performed by the affected renewal EAD applicant.				RIA, RFA.
Effects on wages .....	Preserve access to wages and other compensation for renewal EAD applicants.				RIA.
Effects on growth .....	None.				RIA.

ii. Background and Population

As is detailed elsewhere in the preamble, DHS has twice temporarily increased the current 180-day automatic

extension period for certain renewal EAD applicants' employment authorization and/or EADs from up to 180 days to up to 540 days. The increase

granted by the 2022 TFR was available to eligible renewal applicants whose EAD applications were pending as of May 4, 2022, and to eligible applicants

who filed a renewal EAD application during the 540-day period beginning on or after May 4, 2022, and ending October 26, 2023. The increase granted by the 2024 TFR was available to eligible renewal applicants who filed a renewal EAD application on or after October 27, 2023, and on or before September 30, 2025.

DHS has carefully analyzed the current backlog of cases (as of a July 1, 2024 analysis) and has been able to estimate a “baseline” population of about 388,000 EADs that would potentially face a lapse by March 2026 in the absence of the 2022 and 2024 TFRs.<sup>309</sup> In developing the populations examined for this analysis, we focus on

cases that received the 540-day automatic extension under either the 2022 or 2024 TFR and whose EAD was still pending as of the present date of analysis (July 1, 2024) and filings through September of 2025. This methodology is conceptually the same as that modeled in the 2024 TFR and we are essentially re-estimating the effects because the population and certain other quantitative inputs, such as completions and case processing, have changed substantially.<sup>310</sup> Our analysis considers actual and projected filing volumes,<sup>311</sup> filing time behavior, case processing times, and officer completion metrics. However, there is likely to be some variation in the officer completion

metrics that source this figure, and we have allowed this input to vary 10- and 15-percent from status quo conditions to account for uncertainty such as in USCIS workforce hiring of adjudication officers and officer re-assignments to other non-renewal EAD application workloads.<sup>312</sup> The results are captured in Table 11, which shows by EAD category. As is shown, with a 180-day automatic extension period the lapse population could range from about 306,000 to 468,000, and under status quo conditions with the 540-day automatic extension period granted by the 2022 and 2024 TFRs, about 46,000 could still lapse beginning in July 2024.<sup>313</sup>

TABLE 11A—EADS THAT COULD LAPSE WITH A 180-DAY AUTOMATIC EXTENSION PERIOD, BY CLASS AND PERCENT VARIATION

Variation	A03*	A05	A10	C08	C09	C10**	Total
+15% .....	2,535	416	0	244,243	3,535	55,286	306,016
+10% .....	2,535	496	0	273,277	5,896	55,286	337,490
Status quo .....	2,535	962	0	320,016	8,952	55,286	387,750
-10% .....	2,535	1,533	0	368,346	16,514	55,286	444,214
-15% .....	2,535	1,798	0	383,598	24,887	55,286	468,104

Table 11B—EADS That Could Still Lapse With a 540-Day Automatic Extension Period, by Class and Percent Variation

Variation	A03	A05	A10	C08***	C09	C10	Total
+15% .....	2,197	0	0	44	0	31,265	33,506
+10% .....	2,222	0	0	44	0	34,259	36,525
Status quo .....	2,277	0	0	44	0	43,653	45,975
-10% .....	2,324	0	0	44	0	46,900	49,269
-15% .....	2,357	0	0	8,017	0	47,654	58,029

Source: USCIS analysis of renewal EAD filing data, provided by DHS, USCIS, Office of Performance and Quality (OPQ), Claims 3 database; data provided July 11, 2024.

**Note:** Numbers may not total exactly due to rounding.

\*The estimated A03 population size in Table 11A does not change with the changes in variation because of a small number of average adjudications per month. The status quo number of average adjudications per month during July 2023 through June 2024 was 47. A plus 15% variation would be 54 and a minus 15% variation would be 40. This small change, coupled with a 180-day automatic extension does not change the population estimates over the variation range (+/- 15%).

\*\*The estimated C10 population size in Table 11A does not change with the changes in variation with a 180-day automatic extension because at the time of this analysis (data as of July 1, 2024) C10s were already beginning to expire due to a backlog. There would need to be a much more significant variation than +/- 15% to the status quo average adjudications rate per month of 2,735 for there to be changes in this population.

\*\*\*The C08 population estimated in Table 11B would experience a wave of expirations beginning in October 2026 if the adjudication rate were to decrease 15% from the status quo based on the estimated volume. The estimated 44 cases for the other variation scenarios were projected to expire by July 2024.

In the absence of this rule, and the hypothetical absence of the 2022 TFR

and the 2024 TFR, we estimate that between 306,000 and 468,000 renewal

EAD applicants still pending adjudication as of July 1, 2024, would

<sup>309</sup> This baseline population was derived under the hypothetical condition that the 2022 and 2024 TFRs were not implemented, meaning that certain renewal EAD filers were subject to an up to 180-day automatic extension period instead of an up to 540-day period.

<sup>310</sup> We note that the affected population estimates in this analysis (*i.e.*, the number of EADs expected to lapse without an increase in the automatic extension period), were estimated during a period between July 2023 and March 2026 while the 2024 TFR estimated affected populations between May 2024 and March 2026. For more information, please see footnote 353.

<sup>311</sup> We note that approximately 135,403 renewal EAD applications were filed between October 27, 2023, and April 7, 2024 (*i.e.*, after the application period for the 2022 TFR ended but before the 2024 TFR published). Some, but not all of the 135,403 renewal applications are a subset of the broader “baseline” population of 387,750. As of July 1, 2024, 131,935 were still within their existing facial validity date or within the 180-day automatic extension period and have not benefited from the 2024 TFR yet but may in the near future. The

remaining 3,468 have been prevented from lapsing due to the implementation of the 2024 TFR.

However, these 3,468 would potentially face a lapse by March 2026 because, as detailed later in “Earnings impact to EAD holders,” as of the current date of analysis, they have benefited from a part of the 2024 TFR and still have some benefit to accrue until their EAD would be adjudicated. Source: USCIS analysis of renewal EAD auto extension expirations data, provided by DHS, USCIS, OPQ, Claims 3 database; data provided July 24, 2024.

<sup>312</sup> All other variables remain constant.

<sup>313</sup> Certain categories have been excluded from this analysis. The A17 (E spouses), A18 (L spouses) and C26 (H spouses) potential automatic extensions are limited to the duration of their unexpired I-94 or the automatic extension period, whichever is shorter. However, I-94 data is controlled by CBP Arrival and Departure Information System (ADIS) and is currently not available in a batch/systematic manner for USCIS to use to calculate this automatic extension end date and estimate these populations. Moreover, a large cohort of E, L, and H spouses concurrently file renewal EAD applications with an underlying Form I-129 and Form I-539, and

therefore the automatic extension end date is limited by the current I-94 validity date. But, in these circumstances, the E, L, and H spouses do not have an unexpired I-94 that extends beyond the current expiration date of the existing EAD. While a minority of renewal EAD applications filed for these spouses are not filed concurrently with the Form I-539, and their associated EADs face expiration, USCIS projects that H spouses (the largest population in the cohort) would mostly be processed on time to avoid any lapses in EAD validity. Furthermore, with the new “incident to status” employment authorization for E and L spouses, the relatively low number of A17 and A18 renewals noticeably decreased during the first six months of FY 2024. The A12 and C19 categories (TPS categories) often have a separate automatic extension related to each country-specific **Federal Register Notice (FRN)**. Additionally, each TPS designation, redesignation, or extension only remains in place for up to 18 months at a time. A07, A08, C16, C20, C22, C24, and C31 all have relatively low renewal filing rates. As such, these categories are excluded from this analysis.

potentially experience a lapse in employment authorization and/or employment authorization documentation. Absent any intervention, this population would have begun to lapse in July 2023, as applicants would have only had the option of an automatic extension period of up to 180 days. These lapses were projected through March 2026, approximately 180 days after the

expiration of the 2024 TFR. The TFRs reduced the likelihood that renewal EAD applicants will experience gaps in employment authorization and/or EAD validity with an automatic extension period of up to 540 days. Because the 2022 TFR and 2024 TFRs automatically extended the validity of eligible EADs for up to an additional 540 days and did not on their own reduce incoming volumes, it is estimated that the

adjudication period for some renewal EADs is expected to exceed even the 540 days granted under the TFRs and therefore some renewal EAD applicants may still experience lapses. Table 12 provides a granular tabulation of the populations without the TFRs and with the TFRs and Figure 2 provides a monthly expirations of status quo condition values from Table 12.

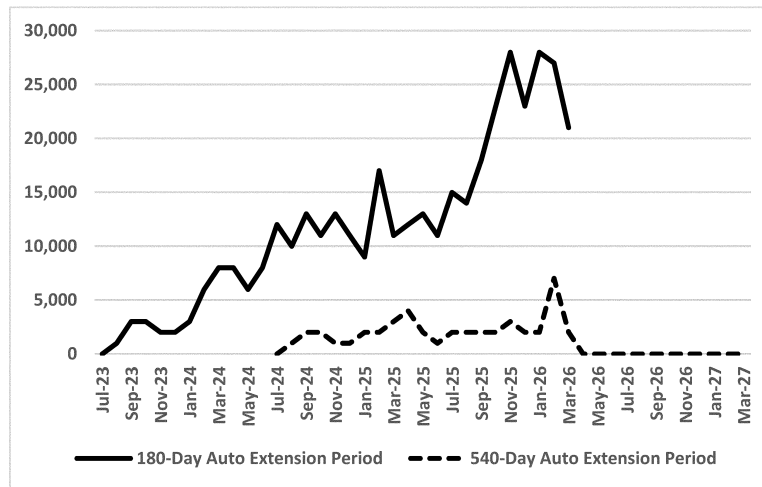
TABLE 12—POPULATION PROJECTIONS BY MONTH, ROUNDED TO THOUSANDS

	180-Day automatic extension period			540-Day automatic extension period		
	Low bound: EADs facing lapse each month (status quo +15%)	Status quo: EADs facing lapse each month	Upper bound: EADs facing lapse each month (status quo - 15%)	Low bound: EADs facing lapse each month (status quo +15%)	Status quo: EADs facing lapse each month	Upper bound: EADs facing lapse each month (status quo - 15%)
Jul-23	0	0	0			
Aug-23	1,000	1,000	1,000			
Sep-23	3,000	3,000	3,000			
Oct-23	3,000	3,000	3,000			
Nov-23	2,000	2,000	2,000			
Dec-23	2,000	2,000	2,000			
Jan-24	3,000	3,000	3,000			
Feb-24	6,000	6,000	6,000			
Mar-24	8,000	8,000	8,000			
Apr-24	8,000	8,000	8,000			
May-24	6,000	6,000	6,000			
Jun-24	8,000	8,000	8,000			
Jul-24	12,000	12,000	12,000	0	0	0
Aug-24	10,000	10,000	10,000	1,000	1,000	1,000
Sep-24	12,000	13,000	15,000	2,000	2,000	2,000
Oct-24	10,000	11,000	12,000	1,000	2,000	2,000
Nov-24	10,000	13,000	16,000	1,000	1,000	1,000
Dec-24	11,000	11,000	14,000	1,000	1,000	1,000
Jan-25	7,000	9,000	12,000	1,000	2,000	2,000
Feb-25	14,000	17,000	20,000	2,000	2,000	3,000
Mar-25	7,000	11,000	14,000	2,000	3,000	3,000
Apr-25	8,000	12,000	18,000	3,000	4,000	4,000
May-25	7,000	13,000	18,000	2,000	2,000	2,000
Jun-25	6,000	11,000	14,000	1,000	1,000	2,000
Jul-25	11,000	15,000	20,000	1,000	2,000	2,000
Aug-25	10,000	14,000	21,000	1,000	2,000	2,000
Sep-25	14,000	18,000	28,000	2,000	2,000	3,000
Oct-25	14,000	23,000	28,000	1,000	2,000	2,000
Nov-25	22,000	28,000	35,000	2,000	3,000	3,000
Dec-25	18,000	23,000	29,000	1,000	2,000	2,000
Jan-26	19,000	28,000	31,000	1,000	2,000	2,000
Feb-26	18,000	27,000	30,000	5,000	7,000	8,000
Mar-26	18,000	21,000	22,000	1,000	2,000	2,000
Apr-26				0	0	0
May-26				0	0	0
Jun-26				0	0	0
Jul-26				0	0	0
Aug-26				0	0	0
Sep-26				0	0	0
Oct-26				0	0	3,000
Nov-26				0	0	3,000
Dec-26				0	0	3,000
Jan-27				0	0	0
Feb-27				0	0	0
Mar-27				0	0	0
Total	306,000	388,000	468,000	34,000	46,000	58,000

Source: USCIS analysis of renewal EAD filing data, provided by DHS, USCIS, OPQ, Claims 3 database; data provided July 11, 2024.

Note: A projection of 0 is 1 or more EAD but less than 500 due to rounding to thousands; "....." indicates no data.

Figure 2. Monthly Expirations of Status Quo Values from Table 12



An assumption that is implicit in the populations developed above is that every individual with a lapsed EAD would be unauthorized to work. In reality, some of the individuals may be authorized to work—or become authorized to work—incident to status and merely relying upon the EAD to evidence that employment authorization. Others may be relying upon the EAD as a government-issued identity document and not using it to obtain employment. In either instance, USCIS does not know, and is unable to reasonably estimate, how many individuals or what percentages of the populations may be separately employment authorized or otherwise not relying on the EAD to document their employment authorization. It is possible, therefore, that the lower bound estimate of population is overstated.

USCIS stresses that the population over time can vary via changes in volumes, processing times, and other factors that are very difficult to predict. As such, DHS acknowledges the uncertainties in these estimates, but they represent the potential population for the impact estimates using the best available information at the time of this analysis. To the extent that the population can vary, the impacts estimated in the following analysis would vary as well.

### iii. Impact Analysis

This section is organized into modules as follows: Module A develops earnings levels for the renewal EAD filers, which is a key component of the impacts we estimate. Module B focuses on the impact simulations for the impacted population's labor earnings

impacts and is divided into two sections: (1) labor earnings, and (2) labor turnover cost. Module C collates the monetized impacts and discounts them over the course of the five fiscal years in which the impacts could accrue. Module D concludes with consideration of other possible effects.

#### a. Module A. Earnings of Renewal EAD Applicants

USCIS expects two broad types of impacts from this final rule that are estimated and quantified. First, there will be impacts to eligible individual EAD holders in terms of their ability to maintain labor earnings. Second, impacts will accrue to businesses that employ the EAD holders in maintaining continuity of employment and thus avoiding labor turnover costs. A core component of both impacts is the earnings of the renewal EAD filers, which figure prominently into the monetized estimates. Since there is likely to be variation in earnings applicable to the population, in this module we cover the methodology to develop a range for earnings bounded by a lower and upper level.

Because many of the individuals renewing EADs would be relatively new entrants to the labor force, we would not expect most of them to earn very higher wages. The Federal minimum wage is currently \$7.25 per hour,<sup>314</sup> but many States have implemented higher minimum wage rates.<sup>315</sup> However, the

Federal Government does not track a nationwide population-weighted minimum wage estimate. Individuals in the population of interest could be located anywhere within the United States and may be subject to a range of minimum wage rates depending on the State or city in which they live.

Consistent with other rules, DHS uses the 10th percentile hourly wage from the Bureau of Labor Statistics (BLS) National Occupational Employment and Wage Estimates for all occupations as a reasonable proxy for the effective minimum wage for individuals who are likely to earn an entry-level wage. BLS estimates account for changes in wages across the United States labor market, which is updated annually and will thus reflect any changes to State minimum wage rates. The 10th percentile hourly wage estimate for all occupations is currently \$13.97, not accounting for worker benefits.<sup>316</sup>

It is likely however, that some individuals impacted earn wages above the minimum. Because the EADs impacted do not include or require, at the initial or renewal stage, any data regarding wages, DHS has no information from the associated forms concerning earnings, occupations, industries, positions, or businesses that may employ such workers. DHS can add some robustness to the estimates by incorporating actual data concerning the employment of the EAD holders to draw inference on their earnings.

<sup>314</sup> See DOL, "Minimum Wage," <https://www.dol.gov/general/topic/wages/minimumwage> (last accessed July 29, 2024).

<sup>315</sup> See DOL, "State Minimum Wage Laws," <https://www.dol.gov/agencies/whd/minimum-wage/state> (last accessed July 29, 2024).

<sup>316</sup> See BLS, "May 2023 National Occupational Employment and Wage Estimates," "United States," [https://www.bls.gov/oes/2023/May/oes\\_nat.htm#00-0000](https://www.bls.gov/oes/2023/May/oes_nat.htm#00-0000) (last visited Apr. 22, 2024). The 10th, 25th, 75th and 90th percentile wages are available in the downloadable XLS file link.



b. Module B. Impacts That Could Accrue to Labor Earnings

1. Earnings Impact to EAD Holders

There are three core inputs (“components” or “variables”) requisite to estimate the impacts that could accrue to labor compensation: the lapse-duration, earnings, and the impacted population.

All three core inputs require some adjustments to make them as salient as possible. Foremost, the lapse-durations are in calendar days, hence we make an adjustment to account for a full-time 8-hour workday and 5-day workweek. However, not all U.S. workers are employed full-time, so we also make an adjustment to number of hours worked per week. BLS currently reports that average weekly hours across all private nonfarm industries is 34.3.<sup>325</sup> This figure is 85.8 percent of a 40-hour workweek.

As it relates to the core variable, population, the assessments of possible impacts rely on the assumption that everyone who was approved for an EAD under the relevant categories entered the labor force. DHS believes this assumption is justifiable because applicants, with few exceptions, would generally not have expended the direct filing (for the pertinent EAD categories in which there is a filing fee) and time-related opportunity costs associated with applying for an EAD if they did not expect to recoup an economic benefit. Realistically, however, individuals might not be employed for any number of other reasons not specifically relevant to this action. The national unemployment rate as of June 2024 is 4.1 percent.<sup>326</sup> There is constant and considerable job turnover in the labor market even when the unemployment rate is low. Individuals could be unemployed due to this normal turnover or from any number of case-specific factors and conditions. As such, we believe it is reasonable to scale the population to account for current unemployment, which is conducted by integrating the employment rate, as unity minus 0.041, to arrive at 0.959.

DHS scales the baseline population by the unemployment rate and the lapse rate—the percentage of the affected renewal population that might still experience a lapse in EAD even with the TFRs—to achieve the population likely

to avoid a lapsed EAD with those rules. The sensitivity analysis discussed in Tables 11 and 12 reveals that the percentage of EADs that would lapse under the 540-day automatic extension period varies. As such, the rate that would not lapse also varies. For the baseline population and lapse rate we rely on the triangle distribution. This distribution is ideal for these inputs because it sets a minimum and maximum value around a center point (“likeliest” value). In our calibration, the center point is the baseline value. For the population, the approximate minimum is 306,000, maximum is 468,000, and the center point is 388,000. For the lapse rate, the minimum is 10.9 percent, maximum is 12.4 percent, and the center point is 11.9 percent.<sup>327</sup> See Table 11.

DHS is interested in estimating the mean and a range for the impacts that are likely to be realized and employs a simulation approach. For the earnings we rely on the uniform distribution. This is a discrete distribution, which essentially means that any value in the range has the same probability as being selected as any other value. This structure is chosen because we have no evidence or data to suggest that the earnings would tend to cluster at either the low or high end of the range.

We analyzed data provided by the USCIS Office of Performance and Quality to estimate lapse-durations by the size of the population that could be impacted.<sup>328</sup> We began by forecasting monthly filing volumes over the period of analysis based on historical filing patterns and expected EAD expirations by month. We also estimated average monthly officer completions based on a twelve-month period between July 2023–June 2024. Specifically, for the period April 2024 through March 2027, OPQ projected the time interval between the date an EAD would expire and when it would eventually be adjudicated (re-approved) based on the average monthly officer completion rates.<sup>329</sup> Because USCIS generally adjudicates applications in the order of the date received, for each month in the analysis we calculated the pending inventory by adding forecasted receipts and subtracting average officer completions. Using this information, we are able to estimate the number of pending applications that would expire

each month and the estimated amount of time until the expired EADs would be adjudicated (*i.e.*, the lapse duration). For the entire batch of OPQ-produced durations, we utilized the Oracle Crystal Ball® Modelling and Simulation Software (“OCB”) to analyze the data. The data analysis batch fit tool in OCB indicates that the Gamma density function provides the best fit.<sup>330</sup>

DHS operates under the assumption that the underlying data structure does not change over the period of analysis. The benefit of the Gamma distribution is that the location parameter is generally close to the minimum value, which will be consistent (in time), and the scale parameter represents the mean, which is generally scalable. The key shift factor that will change in the future is that the average duration will change. To obtain a viable mean for this specific analysis, we divided the number of EADs lapsing by duration into the total number that could lapse over the entire period to obtain individual weighting factors. Multiplying each weight factor by the lapse duration and summing over all data points yielded a weighted average lapse duration of 137 days.

Above, we have described the adjustments made to the population to account for unemployment and employment lapses that may still happen to wages to account for benefits, and to the lapse duration to account for the work week and hours worked. In practice, it is not necessary to make the adjustments to the core inputs directly or even sequentially. The reason is that the inputs (core and incumbent adjustment factors) interact in the estimation procedure multiplicatively, hence they can be abridged into a single equation and nested compactly as a “one-step” routine in the software program.

The inputs and settings for the estimates are encapsulated in Table 14. In practice there are two modules (populations) that will comprise the earnings impacts. The Department believes the impacts will be beneficial to EAD holders as “preserved” or “stabilized” earnings. For EADs that the 540-day automatic extension will

<sup>325</sup> BLS, Economic News Release, “The Employment Situation—June 2024,” [www.bls.gov/news.release/archives/empst\\_07052024.htm](http://www.bls.gov/news.release/archives/empst_07052024.htm) (last visited July 5, 2024).

<sup>326</sup> BLS, Economic News Release, “The Employment Situation—June 2024,” [www.bls.gov/news.release/archives/empst\\_07052024.htm](http://www.bls.gov/news.release/archives/empst_07052024.htm) (last visited July 5, 2024).

<sup>327</sup> Low bound: 33,506 lapses with the rule/306,016 without; Primary: 45,975 lapses with the rule/387,750 without; Upper bound: 58,029 lapses with the rule/468,104 without.

<sup>328</sup> Source: DHS, USCIS, OPQ, Claims 3 database; data provided July 11, 2024.

<sup>329</sup> These projections were for the A03, A05, A10, C08, C09, and C10 classifications.

<sup>330</sup> OCB ranks density fit according to internal routines that evaluate the appropriateness of several tests according to features of the data. In this case, the Gamma density function fits the data best based on all continuous distributions subject to a scoring method applicable to the test statistic of the Anderson-Darling (A–D) test, which in this case is 20.661. The Gamma distribution is a member of the exponential distributions and is applicable in situations where the data displays considerable variance, is restricted to positive values, and is skewed to the right (positively skewed). It is frequently utilized in analyses to predict durations and wait times until future events occur.

prevent from lapsing, the duration input is the Gamma density tuned to the parameters produced by the software and truncated at the upper end by a value of 360 (days), since the Gamma curve is infinite in its upper tail. However, individuals with EADs that may still lapse would also incur a benefit of being able to work exactly 360 days longer than they otherwise

would—there is no variation or distribution, as the extra days is the point value of 360 days. There are any number of ways to derive an expression capturing the two population modules that may still incur stabilized earnings, *i.e.*, (a) those that would be prevented from lapsing, and (b) those that would still lapse. In the technical appendix accompanying this rulemaking, we

develop the system from its long form into a compact nested equation, which is the product of two terms, as is shown in Table 14. The combined employment “combined” scalar is developed to abridge all non-varying inputs common to both modules as a single input for purpose of brevity.

TABLE 14—MODEL FOR ESTIMATION OF EARNINGS IMPACT

Input	Structure	Settings
Baseline Population (P) .....	Triangle distribution .....	<i>Min:</i> 306,000. <i>Max:</i> 468,000. <i>Likeliest:</i> 388,000.
Lapse rate (L) .....	Triangle distribution .....	<i>Min:</i> 10.9%. <i>Max:</i> 12.4%. <i>Likeliest:</i> 11.9%.
Hourly wage (W) .....	Uniform distribution .....	<i>Min:</i> \$13.97. <i>Max:</i> \$42.90.
Lapse Durations: .....	D <sub>S</sub> : Gamma density .....	D <sub>S</sub> : Gamma density
D <sub>S</sub> : EADs saved from lapse .....	D <sub>L</sub> : Point value .....	<i>Location:</i> 0.96. <i>Scale:</i> 137.0. <i>Shape:</i> 1.047. <i>Max:</i> 360. <i>D<sub>L</sub>:</i> 360.
D <sub>L</sub> : EADs that lapse .....		
Combined scalar .....	Point value .....	<i>Benefits multiplier (B):</i> 1.45. <i>Workweek time (T):</i> 5 ÷ 7 days = 0.714. <i>Average hours (H):</i> 34.3 ÷ 40 hours = 0.858. <i>Full time day hours (F):</i> 8.0. <i>Employment rate (E):</i> 1 – 0.041 = 0.959. <i>Scalar (S) = B × T × H × F × E = 6.82.</i>
Nested equation .....	$\{(W \times S \times P) \times (D_S - (L \times (D_S - D_L)))\}$	
Results summary .....	Forecast values (millions, undiscounted <sup>331</sup> )	
	Range level	Preserved Earnings Impact
	low	\$2,539.2
	average	\$10,739.4
	high	\$29,166.2
	<ul style="list-style-type: none"> <li>• Impact type: stabilized earnings to individuals</li> <li>• Contribution to forecast variance:</li> </ul> Lapse duration = 77.0% Hourly wage = 21.4% Lapse rate: negligible Population: 1.6%	

Source: USCIS analysis (7–25–2024).

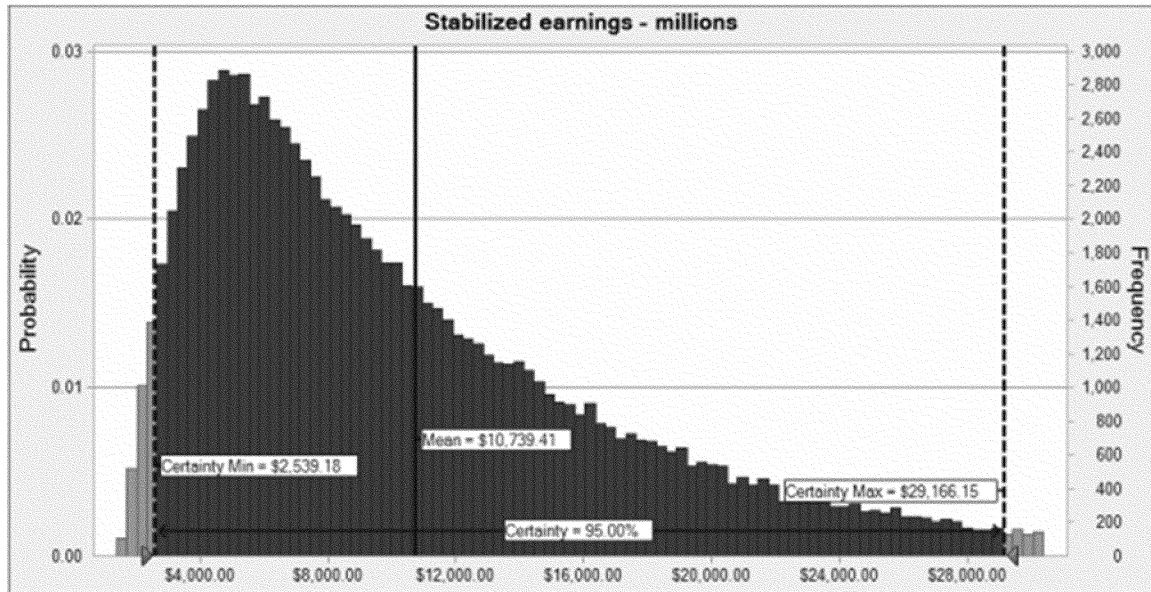
DHS utilized OCB estimate stabilized earnings using the settings encapsulated

in Table 14. OCB repeatedly calculates results using a different set of random values from the range of values and probability distributions described in specific values between the 2.5th and 97.5th percentiles.

Table 14 above to build a model of possible results. We ran 100,000 randomized seed trials, which is more than sufficient to generate a 95 percent level of precision in the results.

<sup>331</sup> The low and high values reflect a 95 percent certainty bound, which captures the distribution



**Figure 3. Stabilized Earnings Estimate**

Based on the simulation, and as shown in Figure 3, the expected value (which is the mean of probabilistic-based forecast values) for stabilized earnings is \$10.7 billion.<sup>332</sup> We also generated a 95 percent certainty range, which reports \$2.5 billion to \$29.2 billion. A sensitivity analysis that scores the inputs in terms of how much variation in each contributes to fluctuation in the forecasted values reveals that the lapse-durations (that vary) contributed at the highest rate (77.0 percent of the total variation), followed by wage (21.4 percent), while the population contributed a small 1.6 percent of the variation (see Table 14 for more information). DHS believes that the earnings impact, which can be thought of as “stabilized” or “preserved” earnings to renewal EAD applicants, will be beneficial to the EAD holders, as the 540-day automatic extension would prevent a lapse in their employment authorization and an incumbent interruption of their labor compensation.<sup>333</sup>

<sup>332</sup> The certainty level is based on the entire range of forecast values, so the 95 percent certainty range is the range between which 95 percent of forecasted values are expected to fall, regardless of proximity to the mean. Roughly speaking, the 95 percent certainty bound would generally capture the distribution-specific forecast values lying between the 2.5th and 97.5th percentiles.

<sup>333</sup> DHS notes that the estimated earnings impact may be slightly understated for the following reason. As of the date of the current analysis, about 0.89 percent of the baseline population (387,750), or, about 3,468 cases, have been prevented from lapsing. These cases are applicable to filings between the end of the 2022 TFR and effective date of the 2024 TFR (October 27, 2023–April 7, 2024). It is difficult to parse out the true impact because as of the present they have benefitted from a part

If, without the 2022 and 2024 TFRs, businesses would not have been able to find replacement labor for the positions the affected renewal EAD applicants would have lost if they had experienced a gap in employment authorization and/or employment authorization documentation, then the unperformed labor would have resulted in a reduction in taxes from employers and employees to governments. Accordingly, the stabilized earnings derived from the TFRs, and estimated above, will prevent such a reduction in taxes. It is challenging to quantify Federal and State income tax impacts of employment in the labor market scenario because individual and household tax situations vary widely as do the various State income tax rates.<sup>334</sup> But DHS is able to estimate the potential contributory effects on employment taxes, namely Medicare and Social Security, which have a combined tax rate of 7.65 percent (6.2 percent and

of the TFR and still have some benefit to accrue (which would be the time between the present and the time at which their EAD would be adjudicated). It is likely that some of these would have lapsed for longer than the average we use for the broad population (in the absence of this final rule and the 2022 and 2024 TFRs).

<sup>334</sup> Robert Frank, “61% of Americans paid no federal income taxes in 2020, Tax Policy Center says,” CNBC (Aug. 18, 2021), <https://www.cnbc.com/2021/08/18/61percent-of-americans-paid-no-federal-income-taxes-in-2020-tax-policy-center-says.html> (last updated Aug. 20, 2021), and for varying State income tax rates, see Tonya Moreno, “Your Guide to State Income Tax Rates,” The Balance, <https://www.thebalance.com/state-income-tax-rates-3193320> (last updated Jan. 3, 2022).

1.45 percent, respectively).<sup>335</sup> With both the employee and employer paying their respective portion of Medicare and Social Security taxes, the total estimated level of tax transfer payments from employees and employers to Medicare and Social Security is 15.3 percent.

DHS estimates the tax impacts on the unburdened earnings basis. This is done by multiplying the stabilized earnings by the employment tax rate of 15.3 percent, and dividing the resulting product by the benefits burden multiple of 1.45.<sup>336</sup> If, without the 2022 and 2024 TFRs, all employers would have been unable to find replacement labor for the position the renewal EAD applicant filled, the TFRs will prevent a reduction in employment taxes from employers and employees to the Federal Government of \$1.1 billion, but could range from \$0.3 billion to \$3.1 billion, in undiscounted terms. The actual value of tax impacts will depend on the number of affected EAD holders that businesses would have been able to easily find reasonable labor substitutes

<sup>335</sup> The various employment taxes are discussed in more detail, see Internal Revenue Service, “Understanding Employment Taxes,” <https://www.irs.gov/businesses/small-businesses-self-employed/understanding-employment-taxes> (last updated May 30, 2024). See Internal Revenue Service “Publication 15,” “(Circular E), Employer’s Tax Guide” (June 7, 2024), <https://www.irs.gov/pub/irs-pdf/p15.pdf> for specific information on employment tax rates. Relevant calculation: (6.2 percent Social Security + 1.45 percent Medicare) × 2 employee and employer losses = 15.3 percent total estimated public tax impact.

<sup>336</sup> We divide by the 1.45 benefits multiplier to account for the fact that employment taxes are calculated based upon wages paid, not including fringe benefits.

for in the absence of any change to the automatic extension period.

There are several caveats to our estimates that could cause the true impacts to vary higher or lower. In one way, the estimates are likely to be understated. DHS accounted for the duration of the EAD lapse, but this is not necessarily the total spell of unemployment individuals could face. The BLS reports that the median spell of unemployment across all economic sectors is 9.8 weeks, which would be 68.6 days (unadjusted).<sup>337</sup> We did not include this because we do not know if some portion of individuals may be able to return to their previous employers (for example, if the EAD lapse was shorter than the median spell of unemployment and if the employer has difficulty finding a replacement worker) or, for those who cannot, if they would start the search process until they became reauthorized to work. If they did not—*i.e.*, they started looking for new work during the lapse, double counting would be invoked for some portion of the duration. It may be useful to think of the total unemployment spell as being the sum of two parts, the EAD lapse and the [job] “search time.” We have no data to support a determination on when the search process starts, and hence if the two parts intersect, and therefore we do not include it. However, to the extent that it may be reasonable to assume that many individuals would not start looking for work until after they became re-authorized to work, incorporating the “search time” duration in addition to their lapse duration would substantially increase the scope of the stabilized earnings impacts.

Second, in addition to the search time spell of unemployment outside of the lapse alone, there are costs to looking for work. There are direct costs involved in activities such as resume updating, possibly learning new skills, travel to interviews, and so on. There are also time-related opportunity costs applicable to the job search. DHS does not have salient data or method to allocate the portion of individuals that would need to conduct a job search and the portion of the search time that could be conducted during the EAD lapse, and thus they are not monetized.

## 2. Labor Turnover Cost Impacts

The longer automatic extension period provided by the 2022 and 2024 TFRs is expected to generate a labor

turnover cost savings to employers of affected EAD holders. DHS bases the assessment of these impacts on the assumption that every EAD applicable to the adjusted population that would have lapsed without the 2022 and 2024 TFRs would have generated an involuntary separation from an employer, and that the separation is due to no other factors.

Employment separations can generate substantial labor turnover costs to employers that can be divided into several components. First are the direct or “hard” costs that involve separation and replacement costs. The separation costs include exit interviews, severance pay, and costs of temporarily covering the employee’s duties and functions with other employees, which may require overtime or temporary staffing. The replacement costs typically include expenses of advertising positions, search and agency fees, screening applicants, interviews, background verification, employment testing, hiring bonuses (and/or incentives), and possible travel and relocation costs. Once hired, employers face additional training, orientation, and assessment costs.

Second, direct costs involve loss of productivity and possibly profitability due to operational and production disruptions, which can include errors from other employees that may temporarily fill the position. Some analysts have identified a third cost segment, which is a type of indirect cost, which encompasses loss of institutional knowledge, networking, and impacts to work-culture, morale, and interpersonal relationships. This last type of cost is almost impossible to measure quantitatively.<sup>338</sup>

There are numerous studies and reports concerning labor turnover costs available from Human Resource entities that are cited across correspondent literature. Some focus on specific occupations, industries, salary levels, and often measure turnover cost in slightly different ways. Labor turnover cost is generally reported as a share of annual earnings or an actual cost per employee. Usually, these reports measure the more direct, or “hard” costs associated with turnover and not intangible effects such as worker morale or lost productivity. Many reports cite a 2012 report published by the Center for American Progress (CAP) that surveyed

more than 30 studies that considered both direct (*e.g.*, separation and replacement) and indirect (*e.g.*, loss of institutional knowledge) costs. DHS captures preserved productivity savings—proxied by stabilized earnings to applicants—had employers not been able to immediately find replacement labor for renewal EAD applicants whose EAD would lapse without the longer automatic extension period.<sup>339</sup>

The CAP and other reports that we reviewed confirm three central aspects of turnover cost: (1) that they vary substantially across industries and jobs; (2) that they tend to grow (in absolute and percentage terms) according to skill level and earnings; and (3) that they are higher for salaried workers compared to hourly wage earners.<sup>340</sup> The report notes that specialized technical jobs and highly paid jobs in line with senior or executive levels, which involve high levels of education, credentials, and stringent hiring criteria, can generate disproportionately high replacement costs that can reach more than 100 percent of the salary—compared to jobs with low educational and technical requirements.<sup>341</sup> However, the CAP survey found that costs tend to range within a bound of 10 percent to around 40 percent of the salary. For example, CAP found despite wide variation and range, for workers earning on average \$75,000 per year or less (2012\$), turnover costs ranged typically from 10 to 30 percent of the salary, clustering at about 21 percent. More recent reports indicate that the typical cost is about one-third of the salary.<sup>342</sup>

DHS could nest the information provided above into an estimation

<sup>339</sup> DHS requested public comments on how, or if, that measure of productivity may overlap with the types of productivity covered in the CAP report but did not receive comment on this specific request in the 2024 TFR.

<sup>340</sup> See Heather Boushey and Sarah Jane Glynn, “There Are Significant Business Costs to Replacing Employees,” Center for American Progress, (Nov. 16, 2012), <https://www.americanprogress.org/issues/economy/reports/2012/11/16/44464/there-are-significant-business-costs-to-replacing-employees/> (last visited Aug. 21, 2024).

<sup>341</sup> See Shane McFeely and Ben Wigert, “This Fixable Problem Costs U.S. Businesses \$1 Trillion,” Workplace, (Mar. 13, 2019), <https://www.gallup.com/workplace/247391/fixable-problem-costs-businesses-trillion.aspx> (last visited Aug. 21, 2024). See also Kate Heinz, “The True Costs of Employee Turnover,” Built In, <https://builtin.com/recruiting/cost-of-turnover> (last updated July 17, 2024).

<sup>342</sup> See “The Real Cost of Employee Turnover in 2021,” Terra Staffing Group (Nov. 4, 2020), <https://www.terstaffinggroup.com/resources/blog/cost-of-employee-turnover> (last visited Aug. 21, 2024). See also Louie Andre, “112 Employee Turnover Statistics: 2021 Causes, Cost & Prevention Data,” Finances Online, <https://financesonline.com/employee-turnover-statistics/#cost> (last visited Aug. 1, 2024).

<sup>337</sup> BLS, Economic News Release, “The Employment Situation—June 2024,” [www.bls.gov/news.release/archives/empst\\_07052024.htm](http://www.bls.gov/news.release/archives/empst_07052024.htm) (last visited July 5, 2024).

<sup>338</sup> For additional descriptions of the components of labor turnover costs, see Holly Bengfort, “Employee retention: The Real Cost of Losing an Employee,” PeopleKeep, (updated April 16, 2024), <https://www.peoplekeep.com/blog/employee-retention-the-real-cost-of-losing-an-employee> (last visited Aug. 21, 2024).

procedure, but it would be beneficial to examine granular data to hone the estimates for two reasons. First, it would be valuable to quantify the correlation between annual earnings and labor turnover costs and incorporate it in the ensuing forecast procedure. Second, it is desirable to obtain a distribution for the data—an average and median could be gathered from the referenced reporting, but there would be a gap in terms of other metrics needed to calibrate a certain distribution.

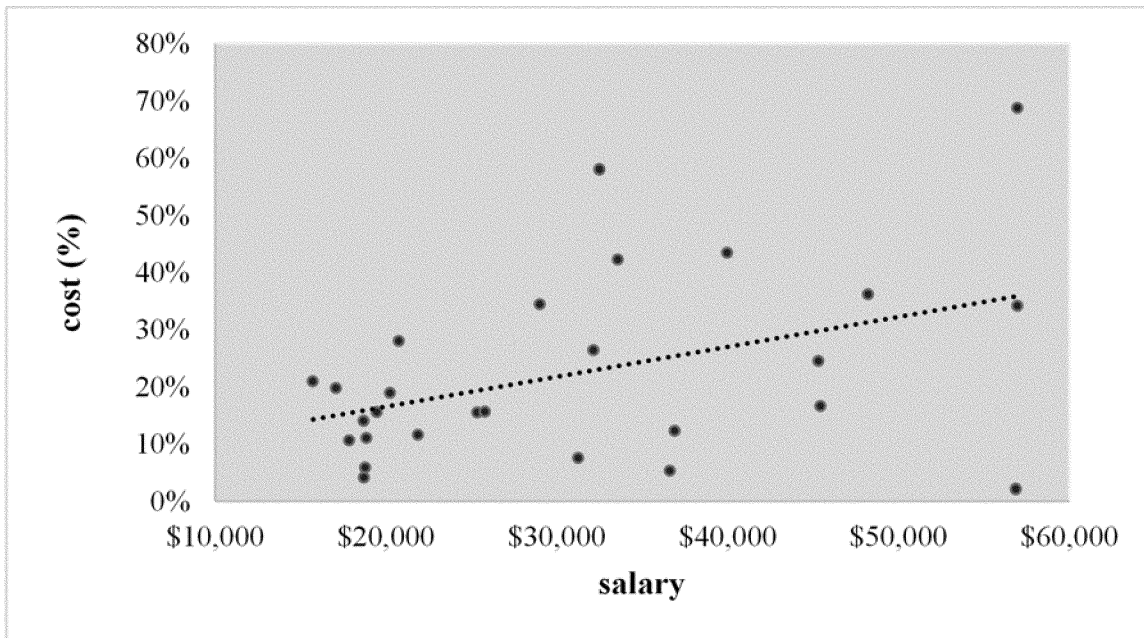
DHS examined a 2020 report by the Washington Center for Equitable Growth, which updated the earlier CAP study results to provide information on about thirty-five studies on turnover costs.<sup>343</sup> We selected data points that captured both the annual earnings salary (which the study benchmarked to 2019 levels) and turnover costs. We then culled the data applicable to salary levels more than the maximum in our

earnings bound. We note before making any adjustments, multiplying the maximum wage (\$42.90) by 2,080 average annual hours yields a maximum annual earnings figure of \$89,232. Twenty-seven resulting data points were employed for the analysis. While this may be relatively few observations, OCB nevertheless was able to fit a lognormal density function to the data, and we are confident in relying on the results.<sup>344</sup> Foremost, the mean of 22.4 percent and the median of 16.6 percent of annual salary are amenable to the metrics reported in the studies referenced above and fall within a substantial range, from 2.1 percent to 68.7 percent. Second, on qualitative grounds the lognormal distribution is well-suited as a setup, as it is often utilized in situations where there is wide variation and there is a discrete lower end minimum, further restricted to positive values. First, negative values can be ruled out in

context—there cannot be zero cost to an employee separation—and thus a lower tail cutoff to bound to the cost percentage is appropriate. Second, we can reasonably conjecture that the costs would tend to cluster near the lower tail of the distribution (as outlined in the CAP report), which is amenable to the positive skew of the distribution, reinforced by the data resultant mean being larger than the median.<sup>345</sup>

Additionally, the scatterplots presented in Figures 4A and 4B with the fitted least squares line clearly reveal that turnover cost is an increasing function of the annual earnings, with a moderately strong correlation coefficient of 0.421.<sup>346</sup> Figure 4A plots the cost as a percentage of salary, as this is how it is inputted into the estimation, while Figure 4B plots the cost in actual dollars, for context (the data points utilized are provided in the accompanying technical appendix).

**Figure 4A. Relation Between Annual Salary and Turnover Cost (%)**



<sup>343</sup> See Kate Bahn and Carmen Sanchez Cumming, “Improving U.S. Labor Standards and the Quality of Jobs to Reduce the Costs of Employee Turnover to U.S. Companies,” Washington Center for Equitable Growth, (December 2020), <https://equitablegrowth.org/wp-content/uploads/2020/12/122120-turnover-costs-ib.pdf> (last visited Aug. 21, 2024). The data are found in the methodological appendix, located in the Docket for this rulemaking.

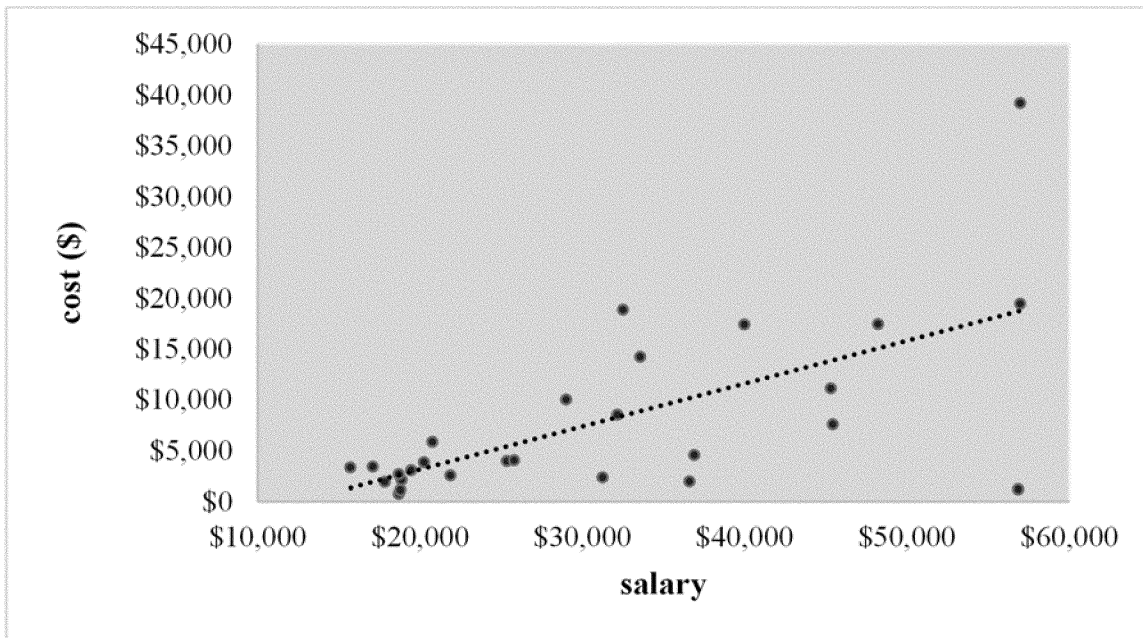
<sup>344</sup> DHS used the same data source for the turnover costs for the 2024 TFR.

<sup>345</sup> OCB indicates that the multiple continuous distributions are appropriate for the data but ranks the Lognormal distribution highest in terms of goodness of fit with an A–D test statistic of  $t = 0.1282$  and an associated  $p$ -value of 0.971. The three produced parameters are as follows: location =  $-0.03$ , mean = 0.23, and standard deviation = 0.19. The fitted parameters affect the shape and position of the distribution.

<sup>346</sup> The slope coefficient for the regression of costs against salary is 5.2E–06. By multiplying this figure

by 5,000 to obtain 0.026, it can be interpreted that a \$5,000 increase in salary is associated with a 2.6 percentage point increase in labor turnover costs, on average, within the range of our data. The exact probability of committing a type I error ( $p$ -value) for the slope coefficient is 0.028, such that we can reject the hypothesis that salary and turnover costs are not systemically related (or such that the correlation in the particular data is due to randomness) with more than 95 percent confidence.

**Figure 4B. Relation Between Annual Salary and Turnover Cost (\$)**



To obtain the annual salary we multiply the (non-burdened) wage bounds (\$13.97 and \$42.90) by 2,080 annual full-time hours but make the adjustment to account for average hours by scaling by 0.858, as was introduced above for stabilized earnings. In addition, we scale the baseline population to account for unemployment and lapses that may still occur even with a longer automatic extension period; the 2022 and 2024 TFRs will delay though not prevent separations for employees that may still experience a lapse. DHS also recognizes that a certain number of individuals may have been terminated or chosen to leave irrespective of any change to the automatic extension period and, accordingly, the 2022 and 2024 TFRs do

not prevent such turnover. DHS does not have data on the number of renewal EAD applicants that would have been terminated from or left their jobs had they not lost employment authorization.<sup>347</sup>

We calibrated the lognormal distribution for the parameters produced and calibrated the estimation program according to the below input values. The lognormal distribution is infinite in the upper tail, and we truncated the cost percentage to 68.7 percent, the highest value in the underlying data. The core inputs are the baseline population, turnover cost percentage, and the wage (unburdened). In practice, it is not necessary to adjust them directly or even sequentially. The reason is that all the inputs (core and

adjustment factors) interact in the estimation procedure multiplicatively, hence they can be abridged into a single equation and nested compactly as a “one-step” routine in the software program as the product of two terms.

The inputs and settings are collated in Table 15, with the nested equation shown as well. The correlation between turnover cost and earnings is tuned to 0.421. Imputing the correlation essentially means that if a randomly chosen earnings value is high, there is a higher probability that a high turnover cost percentage will be selected as well and vice versa for lower cost percentages. The table below summarizes the entire system—the inputs, their settings, and the resulting outputs.

**TABLE 15—MODEL FOR ESTIMATION OF TURNOVER COST IMPACT**

Input	Structure	Settings
Baseline Population (P) .....	Triangle distribution .....	Min: 306,000. Max: 468,000. Likeliest: 388,000.
Lapse rate (L) .....	Triangle distribution .....	Min: 10.9%. Max: 12.4%. Likeliest: 11.9%.
Hourly wage (W) .....	Uniform distribution .....	Min: \$13.97. Max: \$42.90.

<sup>347</sup> Further, DHS does not have data on the number of EAD renewal applicants that have been terminated because their employer used an online calculator provided by USCIS to assist in the determination of an EAD expiration date.

Presumably an employer would determine an EAD expiration well in advance of the date for business continuation purposes. Regardless, an employer would spend time utilizing this optional online calculator with or without this rule and is not

considered an additional burden for this rule. DHS requested public comment on data that could be used to make such an adjustment in the 2024 TFR but did not receive any response.

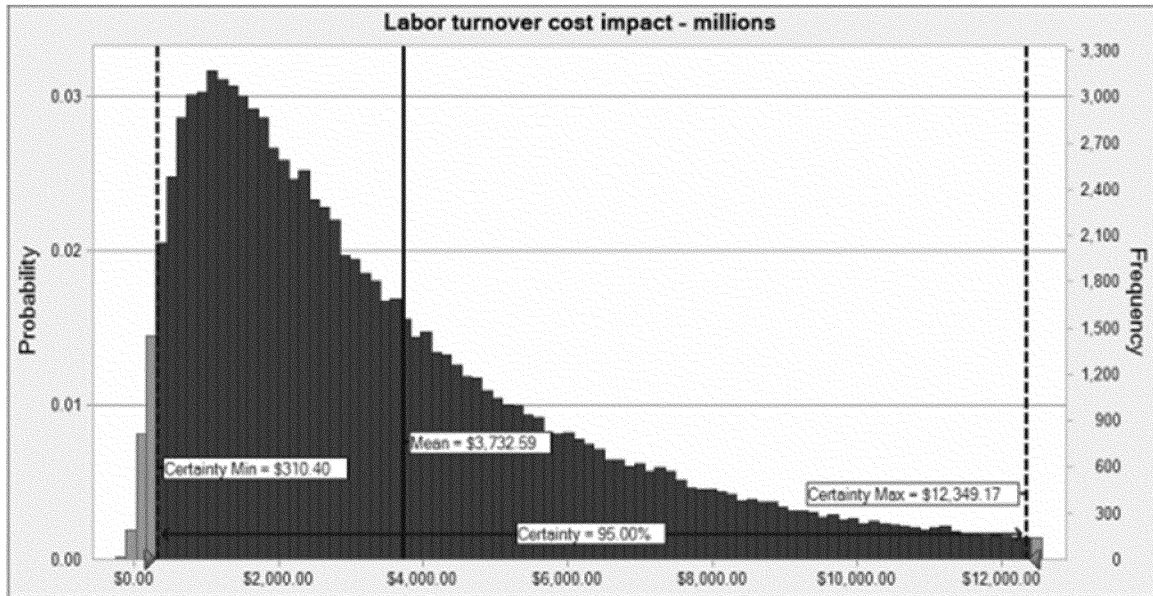
TABLE 15—MODEL FOR ESTIMATION OF TURNOVER COST IMPACT—Continued

Input	Structure	Settings	
Turnover cost % (C) .....	Lognormal density .....	Location: -0.03. Mean: 0.23. S-dev.: 0.19. Max: 0.687.	
Employment scalar (S) .....	Point value .....	Average hour adjustment (H): 0.858. Full time annual hours (A): 2,080. Employment rate (E): 0.959. Scalar = H × A × E = 1,711.	
Correlation .....	W, C .....	0.421.	
Nested equation .....	{(W × C × P × S) × (1 - L)}		
Results summary .....	Forecast values (millions, undiscounted).		
	low	average	high
	\$310.4	\$3,732.6	\$12,349.2
	<ul style="list-style-type: none"> <li>• Impact type: Cost-savings to employers.</li> <li>• Contribution to forecast variance:                             <ul style="list-style-type: none"> <li>(a) Turnover cost (%) = 65.3%.</li> <li>(b) Hourly wage = 34.1%.</li> <li>(c) Population and lapse rate = negligible.</li> </ul> </li> <li>Number of businesses impacted: 25,500–39,000.</li> </ul>		

Source: USCIS analysis, 7–25–2024.

DHS utilized OCB to estimate labor turnover cost impacts using the settings encapsulated in Table 15. We ran 100,000 randomized seed trials, which is more than sufficient to generate 95 percent level of precision in the results. The results are displayed in Figure 5.

Figure 5. Estimated Labor Turnover Impacts



Based on the simulation, the expected value is \$3.7 billion, and the 95 percent precision bound results in a range of forecasts from \$0.3 billion to \$12.3 billion. The sensitivity analysis reveals that variation in the turnover cost percentage of the salary contributed about 65.3 percent of the wide certainty

range while about 34.1 percent was driven by the variance in earnings. The other inputs contributed negligibly. In addition to the projected cost-savings to businesses reported above, DHS can make some estimates of the number of businesses that could benefit from the cost-savings. From the E-Verify data utilized to develop an upper wage

bound, we randomly sampled 451 EAD employers, which is more than the requisite 384 needed for a 95 percent level of confidence and collected the number of E-Verify cases per EAD

employer.<sup>348</sup> The analysis reveals that there were on average twelve cases per EAD employer for FY 2023.<sup>349</sup> If this figure is extrapolated to the baseline population, it would indicate that between 25,500 and 39,000 EAD

employers could be impacted over the time period covered by the 2022 and 2024 TFRs.

c. Module C. Monetized Impacts for the 2022 and 2024 TFRs, FY 2023 Through FY 2027

In Table 16 we collate the undiscounted monetized impacts derived from the above sections.

**TABLE 16—SUMMARY OF MONETIZED IMPACTS**  
[FY 2023 through FY 2027, undiscounted, in \$ millions, \$2023]

	Stabilized earnings	Labor turnover cost	Total impacts	Employment taxes
Low end .....	\$2,539.2	\$310.4	\$2,849.6	\$267.9
Average .....	10,739.4	3,732.6	14,472.0	1,133.2
High end .....	29,166.2	12,349.2	41,515.4	3,077.5

Because the 2022 and 2024 TFRs applied to more than one full fiscal year, we also apply a discounting framework to the impacts. Since there is a one-to-one mapping from the population to the impacts, we can derive the yearly allocations directly from the population figures. According to our analysis, based

on the broad population, the shares of impacts allocated to the FYs 2023, 2024, 2025, 2026, and 2027, in order, are 0.4, 8.3, 27.8, 39.4, and 24.2 percent.<sup>350</sup>

Table 17 provides the allocated impacts according to the allocation derived above, to account for the average, and low and high ends of the

certainty bound in order. The table is organized into two sections to account for undiscounted terms and those at a 2-percent discount rate. We parsed out the stabilized earnings and labor turnover impacts separately, as they will embody different types of impacts.

**TABLE 17—MONETIZED EXPECTED VALUE IMPACTS FOR FY 2023 THROUGH FY 2027**  
[\$ millions, 2023]

<b>A. Undiscounted</b>				
<b>1. Low end bound</b>				
FY	Stabilized earnings	Labor turnover	Total impacts	Estimated taxes <sup>351</sup>
2023 .....	\$9.0	\$1.1	\$10.1	\$0.9
2024 .....	210.3	25.7	236.0	22.2
2025 .....	704.6	86.1	790.8	74.4
2026 .....	1,000.6	122.3	1,123.0	105.6
2027 .....	614.7	75.1	689.8	64.9
5-year Total .....	2,539.2	310.4	2,849.6	267.9
<b>2. Average</b>				
FY	Stabilized earnings	Labor turnover	Total	Taxes
2023 .....	\$38.0	\$13.2	\$51.1	\$4.0
2024 .....	889.4	309.1	1,198.5	93.8
2025 .....	2,980.2	1,035.8	4,016.0	314.5
2026 .....	4,232.1	1,470.9	5,703.1	446.6
2027 .....	2,599.7	903.6	3,503.3	274.3
5-year Total .....	10,739.4	3,732.6	14,472.0	1,133.2

<sup>348</sup>DHS determined the sample size using a standard statistical formula based on the total EAD employer population of 95,400 in FY 2023 with a 95 percent confidence level and a 5 percent confidence interval. This means that there is a 95 percent chance that parameters descriptive of the population (e.g., the EAD employer population size) are no more than 5 percent different from the statistic obtained by the sample.

<sup>349</sup>DHS, USCIS, Immigration Records and Identity Services Directorate (IRIS), Verification Division, received Apr. 11, 2024.

<sup>350</sup>These shares are derived by dividing into a total population of EADs that could expire (before

making any adjustments) across the four-year span FY 2023 through FY 2026 of 387,750 by the share that could expire in each of those years, in order, 3,654 (0.9 percent), 79,539 (20.5 percent), 154,375 (39.8 percent), and 150,182 (38.7 percent). Because the average lapse duration of 137 days is 37.5 percent of a 365-day year, the stabilized earnings and employment taxes may be spread over more than one fiscal year. To account for the cost savings accruing to the next fiscal year (the remaining 62.5 percent), we then extrapolate this percentage to the population for lapses that would begin in the second half of a fiscal year. The resulting impacts are spread over FY 2023 through FY 2027 in the following shares: 0.4 percent (0.9 percent × 37.5

percent), 8.3 percent (0.9 percent × 62.5 percent + 20.5 percent × 37.5 percent), 27.8 percent (20.5 percent × 62.5 percent + 39.8 percent × 37.5 percent), 39.4 percent (39.8 percent × 62.5 percent + 38.7 percent × 37.5 percent), and 24.2 percent (38.7 percent × 62.5 percent). Source: DHS, USCIS, OPQ (July 11, 2024).

<sup>351</sup>If, without the TFRs, businesses could not find replacement labor for any of the affected EAD holders, the tax impacts shown represent the loss in employment taxes this rule would prevent. The actual amount will depend on how easily businesses would have been able to find replacement labor in the absence of these rules.

TABLE 17—MONETIZED EXPECTED VALUE IMPACTS FOR FY 2023 THROUGH FY 2027—Continued  
[\$ millions, 2023]

FY				
<b>3. High end bound</b>				
FY	Stabilized earnings	Labor turnover	Total	Taxes
2023 .....	\$103.1	\$43.6	\$146.7	\$10.9
2024 .....	2,415.4	1,022.7	3,438.0	254.9
2025 .....	8,093.8	3,427.0	11,520.7	854.0
2026 .....	11,493.7	4,866.5	16,360.2	1,212.8
2027 .....	7,060.3	2,989.4	10,049.8	745.0
5-year Total .....	29,166.2	12,349.2	41,515.4	3,077.5
<b>B. 2% discount</b>				
<b>4. Low end bound</b>				
FY	Stabilized earnings	Labor turnover	Total impacts	Estimated taxes
2023 .....	\$8.8	\$1.1	\$9.9	\$0.9
2024 .....	202.1	24.7	226.8	21.3
2025 .....	664.0	81.2	745.2	70.1
2026 .....	924.4	113.0	1,037.4	97.5
2027 .....	556.7	68.1	624.8	58.7
5-year Total .....	2,356.1	288.0	2,644.1	248.6
Annualized .....	499.9	61.1	561.0	52.7
<b>5. Average</b>				
FY	Stabilized earnings	Labor turnover	Total impacts	Estimated taxes
2023 .....	\$37.2	\$12.9	\$50.1	\$3.9
2024 .....	854.8	297.1	1,151.9	90.2
2025 .....	2,808.3	976.1	3,784.4	296.3
2026 .....	3,909.8	1,358.9	5,268.7	412.6
2027 .....	2,354.6	818.4	3,173.0	248.5
5-year Total .....	9,964.9	3,463.4	13,428.3	1,051.5
Annualized .....	2,114.1	734.8	2,848.9	223.1
<b>6. High end bound</b>				
FY	Stabilized earnings	Labor turnover	Total impacts	Estimated taxes
2023 .....	\$101.0	\$42.8	\$143.8	\$10.7
2024 .....	2,321.6	983.0	3,304.5	245.0
2025 .....	7,626.9	3,229.3	10,856.2	804.8
2026 .....	10,618.4	4,495.9	15,114.3	1,120.4
2027 .....	6,394.8	2,707.6	9,102.4	674.8
5-year Total .....	27,062.7	11,458.6	38,521.2	2,855.6
Annualized .....	5,741.6	2,431.0	8,172.6	605.8

Note: Numbers may not total exactly due to rounding.

For the discounted figures, the annualized amounts are the average annual equivalence basis.

Table 18 shows a comparison of stabilized earnings and labor turnover between the 2024 TFR and the updated analysis in this final rule at a 2-percent

discount rate (the figures apply to the means, as the lower and upper bounds are not compared).<sup>352</sup> USCIS projected

<sup>352</sup>This analysis was conducted using data as of July 1, 2024. USCIS updated the analysis with the latest available data, which included operational and policy changes since the data used in

conducting the analysis for the 2024 TFR, such as changes in filing behavior, backlogs, and adjudicative capacity. In this analysis, USCIS evaluates the affected population (*i.e.*, those expected to lapse without an increase in the automatic extension period) during a period between July 2023 and March 2026 and therefore it contains effects of some of the population affected

in the 2024 TFR that, without an increase in the automatic extension period, approximately 800,000 (mean projection) renewal applicants would have been in danger of losing their employment authorization and/or documentation in the period beginning May 2024 and ending March 2026. Based on an updated analysis as of July 1, 2024, in the absence of this rule, and the hypothetical absence of the 2022

TFR and the 2024 TFR, USCIS estimates that approximately 388,000 (mean projection) renewal EAD applicants would experience a lapse in employment authorization and/or employment authorization documentation between this rule's July 2023 and March 2026 period of analysis. The decrease in projection is primarily attributed to an increase in officer completions during the time period

between the 2024 TFR analysis (October 2023) and this analysis (July 2024), specifically for C08 and C09 renewal EAD filings. The decrease in the estimate for renewal EAD applicants that would experience a lapse subsequently decreased monetized estimates for stabilized earnings and labor turnover in this analysis.

TABLE 18—SUMMARY OF 5-YEAR TOTAL STABILIZED EARNINGS AND LABOR TURNOVER AT A 2-PERCENT DISCOUNT RATE  
[\$2022–23]

	2024 TFR (\$2022) <sup>353</sup>	2024 TFR (\$2023)	2024 TFR Update (\$2023)	\$ Difference	% Difference
Stabilized earnings .....	\$29,112.6	\$30,044.2	\$9,964.9	– \$20,079.3	– 66.8
Labor turnover .....	5,177.0	5,342.7	3,463.4	– 1,879.3	– 35.2
Total .....	34,289.5	35,386.9	13,428.3	– 21,958.6	– 62.1

**Note:** The 2024 TFR was indexed to 2023 dollars using the BLS, “Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, all items, by month,” <https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202406.pdf> (last visited Aug. 6, 2024). July 2022: 296.276, July 2023: 305.691. Calculations:  $305.691/296.276 = 1.032$ ;  $\$29,112.6 \times 1.032 = \$30,044.2$ ;  $\$5,177.0 \times 1.032 = \$5,342.7$ .

**Note:** Numbers may not total exactly due to rounding.

d. Module D. Other Impacts

As explained previously, DHS does not know what the next best alternative would have been for businesses had employment authorization lapsed for affected EAD holders. Accordingly, DHS does not know the proportion of the stabilized labor earnings estimates developed above that would represent cost savings to businesses for prevented lost productivity or are prevented transfer payments from affected EAD holders to replacement labor.<sup>354</sup> These effects are very difficult to quantify and could be influenced by multiple factors, but we will address the possibilities at a conceptual level.

In the cases where, in the absence of an increase in the automatic extension period, businesses would have been able to easily find reasonable labor substitutes for the renewal EAD applicants, then the impact of these rules is preventing a distributional impact where the earnings of affected EAD holders would be transferred to others, who might fill in for (and presumably replace) the renewal EAD applicants during their earnings lapse. The portion of the total estimate of stabilized income that would represent this prevented transfer payment will depend on the ability of businesses to

have found replacement labor in the case of an EAD lapse.

In the cases where, in the absence of an increase in the automatic extension period, businesses would not have been able to easily find reasonable labor substitutes for the renewal EAD applicants, then the impact of these rules is preventing an associated loss of productivity for employers. Therefore, the portion of the total estimate of stabilized income that would represent cost savings to employers for prevented productivity losses will depend on the ability of businesses to have found replacement labor in the case of an EAD lapse. In this case, the increase in the automatic extension period may also result in additional cost savings to employers for prevented profit losses and having to choose the next best alternative to the EAD holder.

DHS does not know what this next-best alternative may be for those companies. However, if the replacement candidate would have been substitutable for the affected renewal EAD applicant to a high degree, the labor performed by the new candidate would not have resulted in changes to profits or productivity. Accordingly, if the replacement labor is highly substitutable, we wouldn't expect cost savings for productivity loss as a result of employing the next available

alternative for labor. If, however, the replacement labor is a poor substitute and would have decreased productivity, then preventing the EAD from lapsing will preserve that productivity.

The above discussion involves two important points: If employers replaced individuals who faced a lapse in their employment authorization and/or EAD validity after the automatic extension with others in the labor force, then once employment eligibility and the EAD was eventually reauthorized the EAD holder would need to conduct a new search for a new job. They would thus incur direct costs associated with seeking new employment. As discussed above, DHS was not able to monetize these potential additional costs.

DHS does not believe an increase in the automatic extension period will adversely affect the U.S. labor market. The 2022 and 2024 TFRs, as well as this rule, extend current employment authorization from up to 180 days to up to 540 days for individuals who are at risk of losing it solely because of USCIS processing delays; the increase in the automatic extension period does not grant new work authorization to additional persons. DHS expects that this change will help to partially alleviate the adverse effects that a lapse in employment authorization would have on affected current employment-

by the 2022 and 2024 TFRs. In contrast, the 2024 TFR analysis estimated affected populations between May 2024 and March 2026 and contained no effects of the populations affected by the 2022 TFR. Accordingly, the scope of the affected

population in this analysis is larger than that analyzed in the 2024 TFR.

<sup>353</sup> 89 FR 24628 (Apr. 8, 2024)

<sup>354</sup> Transfer payments are monetary payments from one group to another that do not affect total

resources available to society. See OMB Regulatory Impact Analysis: A Primer pages 7 and 8 for further discussion of transfer payments and distributional effects. [https://www.reginfo.gov/public/jsp/Utilities/circular-a-4\\_regulatory-impact-analysis-a-primer.pdf](https://www.reginfo.gov/public/jsp/Utilities/circular-a-4_regulatory-impact-analysis-a-primer.pdf) (last visited Aug. 21, 2024).



authorized individuals and their employers. In FY 2023, 88 percent of EAD renewals for affected categories were approved<sup>355</sup> and all renewals, by definition, had a previously approved initial EAD application. According to the most recent data (applicable to June 2024), the U.S. labor force stands at 168,009,000.<sup>356</sup> The maximum population of about 468,000 affected individuals during the period of analysis represents 0.30 percent<sup>357</sup> of the national labor force, approximately 412,000 of which would potentially not lapse as a result of the actions taken.<sup>358</sup>

Without a change in the automatic extension period, EAD holders who remain eligible for employment authorization would encounter delays in renewal EADs and either be unauthorized to work for periods of time or lack documentation reflecting their employment authorization. This change does not make additional categories eligible for employment authorization; it simply permanently increases the 180-day timeframe for those already eligible for an automatic extension. It mitigates the risk that these EAD holders will experience gaps in employment authorization and/or EAD validity as a result of USCIS processing delays. Accordingly, stabilized earnings for these EAD holders may also relieve the support network of the applicants for any monetary or other support that

would have been necessary during such a period of unemployment. This network could include public and private entities, and it may comprise family and personal friends, legal services providers and advisors, religious and charity organizations, State and local public institutions, educational providers, and nongovernmental organizations. DHS believes these impacts would accrue as cost-savings to the noncitizen EAD holders and their families.

3. Alternatives Considered

As described earlier in this preamble, DHS again explored the option of increasing the automatic extension period to at least up to 730 days. However, many of the same risks outlined in the 2024 TFR still remain, including risks that would potentially have an associated burden or cost to employers:

- TPS designations and associated EAD benefits cannot be granted for longer than 18 months (which is approximately 540 days).
- Having up to 730 days of an automatic extension period for one group of renewal EAD applicants, and 540 days for others increases the risk of confusion. Employers would be required to understand and adhere to additional different extension periods depending on the eligibility category on

the EAD the worker possessed and when and under what category the renewal EAD application was filed.

- The longer the period of time before an employer has to reverify a noncitizen employee whose employment authorization and/or documentation is automatically extended, the greater the risk they could unknowingly employ someone whose employment authorization has ended.<sup>359</sup>

• Both employers and applicants are already familiar either with the up to 540-day extension under the 2022 and 2024 TFRs. The up to 540-day extension provided under the 2022 TFR continues to be effective for some applicants until October 2025 and the 2024 TFR is effective for some applicants until September 2027; having other validity periods in this Final Rule may be confusing to applicants and employers.

- Form I-797C, Notice of Action, the document that the renewal EAD applicant must present along with the expired or expiring eligible EAD to show that the EAD has been automatically extended, is a non-secure document and DHS prefers shorter validity periods for temporary documents that are non-secure.<sup>360</sup>

DHS provides Table 19 to elucidate the share and number of EADs that could lapse at the baseline population value (388,000) under different automatic extension periods.

TABLE 19—APPROXIMATE EAD LAPSES UNDER DIFFERENT EXTENSIONS

Extension days (above current 180 days)	Total automatic extension days (including current 180 days)	Approximate share that could lapse (percent)	Approximate number that could lapse
0	180	100	388,000
30	210	85	331,000
60	240	71	276,000
90	270	58	225,000
120	300	47	183,000
150	330	37	145,000
180	360	28	108,000
210	390	21	81,000
360	540	12	46,000
540	720	1	3,000

Source: USCIS analysis of renewal EAD filing data, provided by DHS, USCIS, OPQ, Claims 3 database; data provided July 11, 2024.

<sup>355</sup> We note that the applicable renewal EAD approval rate from FY 2022 for A03, A05, A07, A08, A10, A12, A17, A18, C08, C09, C10, C16, C19, C20, C22, C24, C26, and C31 filings was 88 percent. The calculation was made from EAD filing data. See Form I-765, Application for Employment Authorization, All Receipts, Approvals, Denials Grouped by Eligibility Category and Filing Type, FY 2023, [https://www.uscis.gov/sites/default/files/document/data/i-765\\_application\\_for\\_employment\\_fy23.pdf](https://www.uscis.gov/sites/default/files/document/data/i-765_application_for_employment_fy23.pdf) (last updated Nov. 2023). Due to the increase in backlogs, the renewal EAD approval rate was calculated as the number of approvals divided by the sum of approvals and

denials, rather than the receipts basis. Calculation:  $562,209 \div (562,209 + 77,461) = 0.88$ . We note that this percent may be understated because some C09 denials are denied because the applicant's Form I-485 was approved, and they are now a lawful permanent resident; setting aside C09 adjudications entirely, the renewal EAD approval rate would be 92%. Calculation:  $516,866 \div (516,866 + 42,100) = 0.92$ . Further, the table in the above link notes that "[s]ome applications approved or denied may have been received in previous reporting periods." It is possible that an approval or denial reported in this table for FY 2023 could have been from a renewal EAD application submitted in FY 2022.

<sup>356</sup> BLS, Economic News Release, "The Employment Situation—June 2024, Summary Table A, Household Data, seasonally adjusted, Civilian labor force," [www.bls.gov/news.release/archives/empsit\\_07052024.htm](http://www.bls.gov/news.release/archives/empsit_07052024.htm) (July 5, 2024).

<sup>357</sup> Calculation:  $460,000 \div 168,009,000 = 0.0027$ .

<sup>358</sup> Calculation: Likeliest lapse rate = 11.9%;  $1 - 11.9\% = 88.1\%$ ;  $468,000 \times 0.881 = 412,308$ .

<sup>359</sup> Renewal EAD applications are filed by the noncitizen, so employers do not know when or if the application is approved. Employers usually must rely on the employee to provide the information.

<sup>360</sup> See 89 FR 24648 (Apr. 8, 2024).

Even with the increase in the automatic extension period granted under the 2022 and 2024 TFRs an estimated 46,000 EADs could still lapse under status quo conditions. We project that the “near term” cases that could still lapse during July through December 2024 are applications filed under the 2022 TFR and have been pending at least 18 months after their EAD expiration date. Extensions below 540 days would stand to generate larger numbers of potential lapses. Therefore, DHS did not consider lower extensions as alternatives.

DHS has not quantified the net benefits from an alternative of granting extensions greater than 540 days to all or some EAD categories. Qualitatively, although Table 19 shows the approximate number of EADs that could lapse is further reduced using a 720-day bridge (540-day extension + the existing 180 days) and thus attendant benefits would be greater, policy and operational constraints exist. As discussed earlier in this preamble, a longer automatic extension period would result in a larger number of employers using 720 or 730 days as their Form I–9, Employment Eligibility Verification, reverification date, even though only about thirteen percent of affected applicants could need longer than 540 days.<sup>361</sup>

Additionally, TPS designations, and thus associated-EAD benefits are most often granted for 18 months (approximately 540 days) and cannot be granted for longer. Furthermore, the Department believes that a longer period could cause confusion and potential mistakes by employers conducting employment eligibility verifications. While a hypothetical carve out might allow for all non-TPS EAD extensions of greater duration, DHS has limited information on the potential burdens such a carve out could create by deviating from the 540-day extension that applicants and their U.S. employers are familiar with from the 2022 and 2024 TFRs.

### B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The

<sup>361</sup> From Table 19, the approximate number that could lapse at a 540-day automatic extension is 46,000 and 3,000 at a 720-day automatic extension.  $46,000 + 3,000 = 49,000$ .  $49,000 + 388,000 = 0.126$ .

RFA’s regulatory flexibility analysis requirements apply only to those rules for which an agency is required to publish a general notice of proposed rulemaking pursuant to 5 U.S.C. 553 or any other law. *See* 5 U.S.C. 604(a). DHS did not issue a notice of proposed rulemaking for this action.<sup>362</sup> Therefore, a regulatory flexibility analysis is not required for this rule. Nonetheless, DHS has determined that this rule will not have a significant economic impact on a substantial number of small entities. This rule directly regulates individual noncitizens eligible for an automatic extension period with a timely filed EAD renewal application. The rule indirectly impacts certain employers if, in the future, processing times increase beyond the current 180-day automatic extension period. The longer automatic extension period provided by this rule will prevent adverse impacts to employers of affected individuals that would result from a lapse in the employee’s employment authorization. However, the RFA’s regulatory flexibility analysis requirements apply only to small entities subject to the requirements of the rule.<sup>363</sup> The individual noncitizens subject to the requirements of this rule are not small entities as defined in 5 U.S.C. 601(6). Accordingly, DHS certifies that this rule does not have a significant economic impact to a substantial number of small entities.

### C. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed rule, or final rule for which the agency published a proposed rule, which includes any Federal mandate that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector.<sup>364</sup> The inflation adjusted value of \$100 million in 1995 is approximately \$200 million in 2023

<sup>362</sup> *See* 89 FR at 24650–24654 (explaining the basis for bypassing notice and comment for the 2024 TFR).

<sup>363</sup> Small Business Administration, A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act, August 2017, page 22, <https://advocacy.sba.gov/wp-content/uploads/2019/07/How-to-Comply-with-the-RFA-WEB.pdf> (last visited September 26, 2024).

<sup>364</sup> *See* 2 U.S.C. 1532(a).

based on the Consumer Price Index for All Urban Consumers (CPI–U).<sup>365</sup> This rule is exempt from the written statement requirement, because DHS did not publish a notice of proposed rulemaking for this rule.

This final rule does not contain a Federal mandate as the term is defined under UMRA.<sup>366</sup> The requirements of title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA.

### D. Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act)

Under the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, the Administrator of the Office of Information and Regulatory Affairs has determined that this final rule meets the criteria in 5 U.S.C. 804(2). The CRA generally provides a 60-day delayed effective date for such rules<sup>367</sup> but an agency can bypass that requirement “for good cause.”<sup>368</sup> Because this rule makes permanent the 2024 TFR that would otherwise apply for many months before this final rule has a practical effect, DHS has for good cause found that the 60-day delay typically required under 5 U.S.C. 801(a)(3)(A) is unnecessary. Therefore, consistent with 5 U.S.C. 808(2), this rule will become effective on January 13, 2025.

### E. Executive Order 13132 (Federalism)

This final rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of E.O. 13132, 64 FR 43255 (Aug. 4, 1999), this rule does not have sufficient federalism

<sup>365</sup> *See* BLS, “Historical Consumer Price Index for All Urban Consumers (CPI–U): U.S. city average, all items, by month,” <https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202406.pdf> (last visited Aug. 6, 2024). Calculation of inflation: (1) Calculate the average monthly CPI–U for the reference year (1995) and the current year (2023); (2) Subtract reference year CPI–U from current year CPI–U; (3) Divide the difference of the reference year CPI–U and current year CPI–U by the reference year CPI–U; (4) Multiply by 100 = [(Average monthly CPI–U for 2023 – Average monthly CPI–U for 1995) ÷ (Average monthly CPI–U for 1995)] × 100 = [(304.702 – 152.383) ÷ 152.383] = (152.319 / 152.383) = 0.99958001 × 100 = 99.96 percent (rounded). Calculation of inflation-adjusted value: \$100 million in 1995 dollars × 2.00 = \$200 million in 2023 dollars.

<sup>366</sup> The term “Federal mandate” means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 1502(1), 658(6).

<sup>367</sup> *See* 5 U.S.C. 801(a)(3).

<sup>368</sup> *See* 5 U.S.C. 808(2).

implications to warrant the preparation of a federalism summary impact statement.

#### *F. Executive Order 12988 (Civil Justice Reform)*

This final rule was drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform. This final rule was written to provide a clear legal standard for affected conduct and was reviewed carefully to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. DHS has determined that this rule meets the applicable standards provided in section 3 of E.O. 12988.

#### *G. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)*

This final rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

#### *H. National Environmental Policy Act*

DHS and its components analyze final actions to determine whether the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, applies to them and, if so, what degree of analysis is required. DHS Directive 023–01 Rev. 01 and Instruction Manual 023–01–001–01 Rev. 01 (Instruction Manual)<sup>369</sup> establish the policies and procedures that DHS and its components use to comply with NEPA and the Council of Environmental Quality (CEQ) regulations for implementing NEPA.<sup>370</sup>

The CEQ regulations allow Federal agencies to establish, in their NEPA implementing procedures, categories of actions (“categorical exclusions”) that experience has shown do not, individually or cumulatively, have a significant effect on the human environment and, therefore, do not require an environmental assessment (EA) or environmental impact statement (EIS).<sup>371</sup> The Instruction Manual,

Appendix A lists the DHS Categorical Exclusions.<sup>372</sup>

Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.<sup>373</sup>

This rule is strictly administrative and procedural and amends DHS’s existing regulations at 8 CFR 274a.13(d) to permanently increase the period that the employment authorization and/or employment authorization documentation of certain eligible renewal EAD applicants are automatically extended while their renewal applications remain pending with USCIS. More specifically, this rule provides that the automatic extension period applicable to expiring employment authorization and/or EADs for certain applicants who have filed renewal EAD applications will be permanently increased from up to 180 days to up to 540 days.

DHS has reviewed the rule and finds that no significant impact on the environment, or any change in environmental effect will result from the amendments being promulgated in this final rule. This final rule is limited to increasing the automatic extension period applicable to expiring employment authorization and/or EADs for certain renewal applicants who have filed a renewal EAD application and is not part of a larger DHS rulemaking action.

Accordingly, DHS finds that the promulgation of this final rule’s amendments clearly fits within categorical exclusion A3 established in DHS’s NEPA implementing procedures as an administrative change with no change in environmental effect, is not part of a larger federal action, and does not present extraordinary circumstances that create the potential for a significant environmental effect.

#### *I. Family Assessment*

DHS has reviewed this rule in line with the requirements of section 654 of the Treasury General Appropriations Act, 1999.<sup>374</sup> DHS has systematically reviewed the criteria specified in section 654(c)(1), by evaluating whether this regulatory action: (1) impacts the stability or safety of the family,

particularly in terms of marital commitment; (2) impacts the authority of parents in the education, nurture, and supervision of their children; (3) helps the family perform its functions; (4) affects disposable income or poverty of families and children; (5) only financially impacts families, if at all, to the extent such impacts are justified; (6) may be carried out by State or local government or by the family; or (7) establishes a policy concerning the relationship between the behavior and personal responsibility of youth and the norms of society. If the agency determines a regulation may negatively affect family well-being, then the agency must provide an adequate rationale for its implementation.

DHS has determined that the implementation of this regulation will not negatively affect family well-being and will not have any impact on the autonomy and integrity of the family as an institution. DHS believes, similar to the 2022 and 2024 EAD TFR, that this final rule will create positive effects on the family by mitigating uncertainty about continued employment authorization for renewal applicants.

#### *J. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all agencies are required to submit to OMB, for review and approval, any reporting requirements inherent in a rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

However, this rule requires the use of USCIS Form I–765. This form has previously been approved by OMB under the Paperwork Reduction Act. The OMB control number for this information collection is 1615–0040. As this is a final rule that only will permanently increase the duration of an automatic extension of employment authorization and EADs, USCIS does not anticipate a need to update the Form I–765 or to collect additional information beyond that already collected on the application Form.

## **VII. List of Subject and Regulatory Amendments**

### **List of Subjects in 8 CFR Part 274a**

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, DHS amends 8 CFR part 274a as follows:

<sup>369</sup> The Instruction Manual contains DHS’s procedures for implementing NEPA and was issued November 6, 2014, available at <https://www.dhs.gov/publication/directive-023-01-rev-01-and-instruction-manual-023-01-001-01-rev-01-and-catex> (last visited Jul. 25, 2024).

<sup>370</sup> 40 CFR parts 1500 through 1508.

<sup>371</sup> 40 CFR 1507.3(e)(2)(ii) and 1501.4.

<sup>372</sup> See Appendix A, Table 1.

<sup>373</sup> *Instruction Manual 023–01* at V.B(2)(a)–(c).

<sup>374</sup> Public Law 105–277, 112 Stat. 2681 (1998).

**PART 274a—CONTROL OF EMPLOYMENT OF ALIENS**

■ 1. The authority citation for part 274a is revised to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1105a, 1158, 1184, 1254a, 1324a; 48 U.S.C. 1806; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 114–74, 129 Stat. 599 (28 U.S.C. 2461 note); 8 CFR part 2.

■ 2. Amend § 274a.2 by revising the third sentence of paragraph (b)(1)(vii) to read as follows:

**§ 274a.2 Verification of identity and employment authorization**

(b) \* \* \*

(1) \* \* \*

(vii) \* \* \* If an Employment Authorization Document (Form I–766) as described in 8 CFR 274a.13(d) was presented for completion of the Form I–9 in combination with a Notice of Action (Form I–797C), stating that the original Employment Authorization Document has been automatically extended, reverification applies upon the expiration of the automatically extended validity period under 8 CFR 274a.13(d) and not upon the expiration date indicated on the face of the individual’s Employment Authorization Document. \* \* \*

\* \* \* \* \*

■ 3. Amend § 274a.13 by:

■ a. Revising paragraphs (d)(1) introductory text, and (d)(1)(i);

■ b. Revising and republishing paragraph (d)(3); and

■ c. Removing paragraphs (d)(5) and (d)(6).

The revisions read as follows:

**§ 274a.13 Application for employment authorization.**

\* \* \* \* \*

(d) \* \* \*

(1) *Automatic extension of Employment Authorization Documents.*

Except as otherwise provided in this chapter or by law, notwithstanding § 274a.14(a)(1)(i), the validity period of an expired or expiring Employment Authorization Document (Form I–766) and, for aliens who are not employment authorized incident to status, also the attendant employment authorization, will be automatically extended for an additional period not to exceed 540 days if the request for renewal meets all of the criteria listed in paragraphs (d)(1)(i) through (iii) of this section and was pending on May 4, 2022, or was properly filed on or after May 4, 2022. For renewal applications properly filed and adjudicated before May 4, 2022, the validity period of such an expired or expiring Employment Authorization Document (Form I–766) and, for aliens who were not employment authorized incident to status, also the attendant employment authorization, was automatically extended for an additional period not to exceed 180 days if the request for renewal met all of the criteria listed in paragraphs (d)(1)(i) through (iii) of this section. The first day of the automatic extension under this paragraph is the day after the expiration date shown on the face of the expired or expiring Employment Authorization Document (Form I–766). To be eligible for the automatic extension under this paragraph, the request must be:

(i) Properly filed on a form designated by USCIS and as provided by form instructions before the expiration date shown on the face of the Employment Authorization Document, or, for Temporary Protected Status-related

Employment Authorization Documents (EADs), during the re-registration filing period described in the applicable **Federal Register** notice;

\* \* \* \* \*

(3) *Termination.* For renewal requests pending on May 4, 2022, or properly filed on or after May 4, 2022, the period authorized by paragraph (d)(1) of this section automatically terminates the earlier of up to 540 days after the expiration date of the Employment Authorization Document (Form I–766), or upon issuance of notification of a decision denying the renewal request. For renewal applications that were properly filed and adjudicated before May 4, 2022, the period authorized by paragraph (d)(1) of this section automatically terminated upon the earlier of up to 180 days after the expiration date of the Employment Authorization Document (Form I–766) or issuance of notification of a decision denying the renewal request. Nothing in paragraph (d) of this section will affect DHS’s ability to otherwise terminate any employment authorization or Employment Authorization Document, or extension period for such employment or document, by written notice to the applicant, by notice to a class of aliens published in the **Federal Register**, or as provided by statute or regulation including 8 CFR 274a.14.

\* \* \* \* \*

**Alejandro N. Mayorkas,**  
*Secretary, U.S. Department of Homeland Security.*

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