DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 208 and 274a

[CIS No. 2799–25; DHS Docket No. USCIS–2025–0370]

RIN 1615–AC97

Employment Authorization Reform for Asylum Applicants

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Homeland Security (DHS) proposes to modify regulations governing applications for asylum and withholding of removal (asylum applications) and employment authorization based on a pending asylum application. The proposed rule would change filing and eligibility requirements for aliens requesting employment authorization and an employment authorization document (EAD) based on a pending asylum application. The changes include pausing acceptance of EAD applications from asylum applicants during periods when affirmative asylum average processing time exceeds 180 days, extending the waiting period to apply for employment authorization to 365 days, changing EAD application processing time requirements, and adding eligibility requirements.

DATES: Comments on this proposed rule, including the proposed information collections, must be received on or before April 24, 2026. The electronic Federal Docket Management System will accept comments prior to midnight Eastern time at the end of that day.

ADDRESSES: You may submit comments on the entirety of this proposed rulemaking package, identified by DHS Docket No. 2025–0370, through the Federal eRulemaking Portal: *http://www.regulations.gov.* In accordance with 5 U.S.C. 553(b)(4), the summary of this rule may also be found at *https://www.regulations.gov.* Follow the website instructions for submitting comments.

Comments must be submitted in English, or an English translation must be provided. Comments submitted in a manner other than via *http://www.regulations.gov,* including emails or letters sent to DHS or U.S. Citizenship and Immigration Services (USCIS) officials, will not be considered comments on the proposed rule and may not receive a response from DHS. Please note that DHS and USCIS cannot accept any comments that are hand-delivered or couriered. In addition, USCIS cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. USCIS is also not accepting mailed comments at this time. If you cannot submit your comment by using *http://www.regulations.gov,* please contact Samantha Deshommes, Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by telephone at (240) 721–3000 for alternate instructions.

FOR FURTHER INFORMATION CONTACT: Division of Humanitarian Affairs, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone (240) 721–3000 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

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K. Executive Order 12630 (Governmental Actions and Interference With Constitutionally Protected Property Rights)

Table of Abbreviations

AO—asylum officer
APA—Administrative Procedure Act
BIA—Board of Immigration Appeals
BLS—U.S. Bureau of Labor Statistics
CBP—U.S. Customs and Border Protection
CFR—Code of Federal Regulations
DHS—U.S. Department of Homeland Security
DOJ—U.S. Department of Justice
EAD—employment authorization document
E.O.—Executive Order
EOIR—Executive Office for Immigration Review
Form I–589—Application for Asylum and for Withholding of Removal
Form I–765—Application for Employment Authorization
FY—Fiscal Year
HSA—Homeland Security Act of 2002
ICE—U.S. Immigration and Customs Enforcement
IIRIRA—Illegal Immigration Reform and Immigrant Responsibility Act of 1996
IJ—Immigration Judge
INA—Immigration and Nationality Act
INS—Immigration and Naturalization Service
LIFO—last in, first out
NEPA—National Environmental Policy Act
NPRM—notice of proposed rulemaking
NTA—Notice to Appear
OMB—Office of Management and Budget
PRA—Paperwork Reduction Act
RFA—regulatory flexibility analysis
RIA—regulatory impact analysis
SBREFA—Small Business Regulatory Enforcement Fairness Act of 1996 (Congressional Review Act)
Secretary—Secretary of Homeland Security
TVPRA—William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008
UAC—Unaccompanied Alien Child
UMRA—Unfunded Mandates Reform Act of 1995
U.S.C.—United States Code
USCIS—U.S. Citizenship and Immigration Services

I. Public Participation

DHS invites all interested parties to participate in this rulemaking by submitting written data, views, comments and arguments on all aspects of this proposed rule. DHS also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments must be submitted in English, or an English translation must be provided. Comments that will provide the most assistance to USCIS in implementing these changes will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change. Comments submitted in a manner other than via *http://www.regulations.gov,* including emails or letters sent to DHS or USCIS officials, will not be considered comments on the proposed rule and may not receive a response from DHS.

Instructions: If you submit a comment, you must include the agency name (U.S. Citizenship and Immigration Services) and the DHS Docket No. USCIS–2025–0370 for this rulemaking. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy and Security Notice available at *http://www.regulations.gov.*

Docket: For access to the docket and to read background documents or comments received, go to *http://www.regulations.gov,* referencing DHS Docket No. USCIS–2025–0370. You may also sign up for email alerts on the online docket to be notified when comments are posted or a final rule is published.

II. Executive Summary

A. Purpose of the Regulatory Action

The overarching goals of this proposed rulemaking are to enhance the benefit integrity of requests for asylum and employment authorization based on a pending asylum application, address national security and public safety concerns, and mitigate undue strains on DHS's operational resources by reducing the incentive for aliens to file frivolous, fraudulent, or otherwise meritless asylum applications as a means to obtain employment authorization, and thereby facilitating faster and more efficient adjudications of meritorious asylum claims and pending asylum employment authorization applications. USCIS' receipts of initial applications for employment authorization based on a pending asylum application have reached a historic high and USCIS' adjudicative resources are strained.

To enhance benefit integrity, protect national security, and reduce resource strains on USCIS, DHS proposes changes to its regulations regarding EAD applications filed by asylum applicants [1] under 8 CFR 274a.12(c)(8) (''(c)(8) category''). DHS proposes to codify in regulations to pause USCIS' acceptance of initial Form I–765, Application for Employment Authorization (''EAD application''), filings in the (c)(8) category when USCIS' average processing time for affirmative asylum applications exceeds 180 days. This proposed rule also increases the waiting period to apply for (c)(8) EADs to 365 calendar days, extends the processing timeframe for USCIS to adjudicate initial (c)(8) EAD applications, and introduces additional eligibility requirements for (c)(8) EADs. Lastly, the proposed rule also impacts affirmative asylum processing by allowing USCIS to prioritize adjudication of asylum applications when derogatory information is found during review of the EAD application. Allowing asylum officers to prioritize an affirmative asylum application based on derogatory information found during the employment authorization application process will improve USCIS' national security and public safety posture while also allowing the agency to more efficiently triage and process potentially frivolous, fraudulent, or otherwise meritless cases.

As discussed below, there is historical precedent for the provisions proposed in this rule, and DHS believes that the promulgation of this rule will reduce frivolous, fraudulent, or otherwise meritless asylum applications that are filed for the sole purpose of obtaining employment authorization. Ultimately, reducing frivolous, fraudulent, or meritless asylum filings will enable USCIS to dedicate an increased share of its finite resources to adjudicating meritorious asylum applications, including backlog cases, and other pending benefit requests. USCIS anticipates that the impact of this proposed rule will align the adjudication of the applications for (c)(8) EADs more closely with the statute by facilitating timely adjudication of asylum applications and eventually limiting work authorization during the pendency of an application for asylum to a reduced number of cases where a decision on an asylum application cannot be made within 365 days.

[1] For purposes of this rule, the term ''asylum applicant'' is generally used interchangeably with ''aliens who applied for asylum,'' and ''aliens with a pending asylum application.''

B. Summary of the Major Provisions of the Regulatory Action

DHS proposes to codify in regulation the following major changes:

1. Amend 8 CFR 208.3(c)(3), Form of Application

DHS proposes to align its criteria for determining when an asylum application is received and complete more closely with the general rules governing immigration benefit requests in 8 CFR 103.2. The existing regulations at 8 CFR 103.2(a)(7) state that USCIS will record the receipt date as of the actual date the immigration benefit request is received at the designated filing location, whether electronically or on paper, provided that it is signed with a valid signature, executed, and filed in compliance with the regulations governing that specific benefit request and with the correct fee. DHS proposes to apply these existing regulations to asylum applications filed after the effective date of this rule. Immigration benefit requests not meeting these requirements are rejected and returned and do not retain a filing date. DHS also proposes to remove the language in 8 CFR 208.3(c)(3) providing that an application for asylum will be deemed ''complete'' if USCIS fails to return the incomplete application to the alien within a 30-day period.

2. Amend 8 CFR 208.7(a), Employment Authorization

a. Biometrics

DHS proposes to require all applicants for a (c)(8) EAD, including renewal requests, to submit biometrics. If an alien fails to appear for biometrics submission, the alien's application for employment authorization would be denied under 8 CFR 103.2(b)(13)(ii), similar to how USCIS currently handles other benefit requests.

b. Extension of 180-Day Asylum EAD Clock to 365 Calendar Day Waiting Period

Under the proposed rule, asylum applicants would be eligible to apply for employment authorization 365 calendar days from the date their asylum application is received. The 365 calendar-day waiting period will begin on the date of the receipt of a complete asylum application, as recorded pursuant to 8 CFR 103.2(a)(7).

c. Recommended Approvals

DHS proposes to remove the language referring to ''recommended approvals.'' USCIS' Asylum Division no longer issues recommended approvals as a preliminary decision for affirmative asylum adjudications.

d. Processing Timeframes

DHS proposes to amend the regulatory requirement that USCIS complete adjudication of initial (c)(8) EAD applications within 30 days. For initial (c)(8) EAD applications received on or after the effective date of the final rule, DHS proposes to extend the processing timeframe to 180 days for USCIS to adjudicate the EAD application. DHS does not propose any changes to initial (c)(8) EAD applications submitted prior to the effective date of this rule.

e. Ineligibility Grounds

DHS proposes to exclude from (c)(8) EAD eligibility any alien where there is reason to believe that the alien may be barred from a grant of asylum due to one of the criminal bars to asylum under sections 208(b)(2)(A)(ii)–(iii).

f. Effect of a Denial of Asylum Application

DHS proposes to exclude from initial (c)(8) EAD eligibility any alien whose asylum application is denied by an asylum officer or an Immigration Judge (IJ) within the 365 calendar-day waiting period, or before the adjudication of the initial (c)(8) EAD application.

g. One-Year Filing Deadline

DHS proposes to exclude from (c)(8) EAD eligibility any alien whose asylum application is filed on or after the effective date of the final rule and more than 1 year after the alien's arrival in the United States, unless an asylum officer or IJ determines that an exception to the 1-year filing deadline exists, or unless the alien is under USCIS' initial jurisdiction as an unaccompanied alien child (UAC).

h. Illegal Entry

DHS proposes to exclude from (c)(8) EAD eligibility any alien who entered or attempted to enter the United States without inspection on or after the effective date of the final rule, unless the alien, without delay but no later than 48 hours after entry, expressed to an immigration officer an intention to apply for asylum or expressed to an immigration officer a fear of persecution or torture; or unless the alien establishes good cause for the illegal entry or attempted entry; or unless the alien meets the definition of, or at any time since their most recent entry was determined to be, a UAC as defined in 6 U.S.C. 279(g)(2).

i. Use of Derogatory Information

To assist with improving adjudicative efficiency, DHS proposes to prioritize asylum applications for adjudication if USCIS finds derogatory information during the process of the adjudication of (c)(8) EAD applications.

j. Pause and Re-Start of Acceptance of Initial (c)(8) EAD Applications

DHS proposes to pause the acceptance of initial (c)(8) EAD applications when the average processing time for affirmative asylum applications over a consecutive period of 90 day adjudications exceeds 180 days. After such a pause is implemented, acceptance of initial (c)(8) EAD applications would resume when the average processing time for affirmative asylum application adjudications over a consecutive period of 90 days is less than or equal to 180 days. The USCIS Director's determination to pause and restart (c)(8) EAD acceptances will be based solely on the affirmative asylum application processing times, and not subject to discretion. In evaluating the affirmative asylum application processing times for USCIS asylum cases, the USCIS Director will consider all pending asylum applications before USCIS over the preceding 90-day period. The rule would require the USCIS Director to review affirmative asylum application processing times on the effective date of the final rule. DHS proposes to notify the public of any such processing changes and provide the supporting quarterly processing times through USCIS website announcements.

As described in section V.A of this preamble, USCIS' current affirmative asylum processing times are significantly greater than 180 days.[2] Processing times were trending downward, but recently increased again. USCIS expects this rule to support another downward trend in the long term, but USCIS also expects that, upon implementation of this rule, new EAD applications for pending asylum applicants would be paused for an extended period, possibly many years. For example, without factoring in any of the other proposed changes in this rule and how they may impact adjudication times, it may take between 14 and 173 years to reach a 180-day processing time, depending on the extent of the reduction in asylum application receipts

[2] USCIS OPQ DATA, ''I–589 Processing Time With and Without Admin Closed by Fiscal Year (FY2022–2025) (May 27, 2025). DHS notes these processing times are under LIFO processing, so these are still the ''newer'' cases being adjudicated. Further, these adjudications are not reducing the overall size of the asylum backlog.

following this rule. It bears repeating that neither of those projections take into account any of the other proposed changes in this rule which, if finalized, would also shorten those processing times. USCIS also recognizes that while the asylum adjudication processing time calculation will be based solely on affirmative asylum applications, the pause on acceptances of (c)(8) employment authorization applications will impact both affirmative and defensive asylum applications. While this is a significant change in access to employment authorization based on a pending asylum application, DHS believes it is necessary to achieve its goals of enhancing benefit integrity, protecting national security, and reducing resource strains.

3. Amend 8 CFR 208.7(b), Renewal

DHS proposes to clarify and consolidate the requirements for requesting a (c)(8) EAD renewal and specify that aliens applying for renewal (c)(8) EADs must also submit biometrics.

4. Amend 8 CFR 208.7(c), Termination

Under the proposed rule, termination of a (c)(8) EAD would occur: (1) immediately following the denial of an asylum application by an asylum officer, unless the case is referred to an Immigration Judge; (2) on the date that is 30 days after the date on which an Immigration Judge denies an asylum application, unless the alien makes a timely appeal to the Board of Immigration Appeals; or (3) immediately following the denial or dismissal by the Board of Immigration Appeals of an appeal of a denial of an asylum application.

5. Amend 8 CFR 274a.12(c)(8)

DHS proposes to remove the reference to recommended approvals because USCIS no longer issues recommended approvals as a preliminary decision for affirmative asylum adjudications.

6. Amend 8 CFR 274a.13, Application for Employment Authorization

Under the proposed rule, approval of (c)(8) EAD applications would be at USCIS' discretion, in keeping with its discretionary authority under section 208(d)(2) of the INA, 8 U.S.C. 1158(d)(2). DHS also proposes to replace the detailed information about filing and adjudicating applications for (c)(8) EADs with a reference to 8 CFR 208.7.

7. Technical and Conforming Updates to the Proposed Amendments

DHS proposes technical and conforming amendments to the affected regulations to align with the major changes described previously, including structural updates to 8 CFR 208.7(a) in order to incorporate the new provisions. The proposed rule would also revise outdated language, such as replacing references to ''the commissioner'' with ''USCIS.''

C. Impact of Effective Date of the Final Rule

Under this proposed rule, DHS will allow aliens with pending asylum applications that have not yet been adjudicated and who already have employment authorization before the final rule's effective date to remain employment authorized until the expiration date on their current EAD, unless the card is terminated or revoked on the grounds specified in regulations in effect when their EAD was issued.

In this proposed regulation, there are certain provisions that apply only to initial (c)(8) EAD applications filed on or after the effective date of the final rule. Provisions that apply only to initial (c)(8) EAD applications are noted in the proposed regulatory text. The remaining proposed provisions apply to both initial and renewal (c)(8) EAD applications filed on or after the effective date of the final rule. In general, and unless otherwise specified, aliens who file renewal (c)(8) EAD applications on or after the effective date of the final rule would be subject to the applicable provisions in this proposed rule regardless of the date on which their initial application for a (c)(8) EAD was filed. By applying many of these provisions to renewals, DHS aims to further insulate the employment authorization and asylum processes from fraud and abuse. Aliens requesting employment authorization renewals who may have abandoned their asylum applications or not appeared for their asylum interviews or biometrics appointments will no longer be able to receive employment authorization renewals due to additional scrutiny under the proposed rule. The application of certain provisions to renewals will also allow DHS to vet aliens and reduce the number of employment authorization renewals granted to aliens who were convicted of crimes after receiving their initial EAD, thereby enhancing public safety and strengthening national security. Finally, applying these changes to renewals as well as initials results in efficiencies for USCIS adjudicators, who would only have to apply one set of eligibility requirements for (c)(8) EADs and not one set of eligibility requirements for initial (c)(8)s and a different set of requirements for renewal (c)(8)s.

The provisions that apply only to initial (c)(8) EAD applications include the proposed changes to the processing timeframe, the waiting period to apply for and receive a (c)(8) EAD, and the pause and re-start of (c)(8) EAD application acceptance. With regard to the pause and re-start, USCIS anticipates that the rule would result in an initial and potentially lengthy pause. USCIS anticipates that this pause would be instituted after USCIS reviewed average asylum application times for the first 90-day period after the rule took effect. USCIS acknowledges that, while the asylum adjudication processing time calculation will be based solely on affirmative asylum applications, the pause on acceptances of (c)(8) employment authorization applications will impact both affirmative and defensive asylum applicants. This rule will not have any impact on the ability to apply to replace lost, stolen, or damaged (c)(8) EADs.

1. Processing Timeframe

DHS proposes to amend 8 CFR 208.7(a)(1) to extend the processing requirement from 30 days to 180 days for all initial (c)(8) EAD applications filed on or after the effective date of the final rule. Any initial (c)(8) EAD applications that are pending as of the effective date of the final rule would continue to be subject to the current 30-day processing requirement. A fuller discussion of this change and litigation relating to processing timeframes in *Rosario* v. *USCIS* appears in section V.D of this preamble. There are currently no processing timeframe requirements for renewal (c)(8) EAD applications, and there would be no changes to timeframe requirements for renewal (c)(8) EAD applications within this proposed rule.

2. Waiting Period To Apply for and Receive an Initial (c)(8) EAD

DHS proposes to amend the waiting period to apply for and receive an initial (c)(8) EAD to 365 calendar days. This regulation would apply to all initial applications for (c)(8) EADs filed on or after the effective date of the final rule. Any initial (c)(8) EAD applications that are pending as of the effective date of the final rule would still be subject to the current 180-day Asylum EAD Clock. There are currently no regulatory waiting period requirements for renewal (c)(8) EAD applications,[3] and there

[3] USCIS advises aliens that they should file their renewal Form I–765 within 6 months of the expiration date of the current EAD. USCIS, ''I–765, Application for Employment Authorization,'' *https://www.uscis.gov/i-765* (last updated Apr. 29, 2025).

would be no changes related to waiting periods for renewal (c)(8) EAD applications within this proposed regulatory action.[4]

3. Pause and Re-Start of (c)(8) EAD Application Acceptance

DHS proposes to pause and re-start the acceptance of initial (c)(8) EAD applications based on the average processing time of asylum application adjudications over a 90-day period. For purposes of this NPRM, an affirmative asylum application is considered processed when a grant, referral, or denial is issued or the application is administratively closed. Cases described as administrative closures are those that do not receive a final decision on the merits but are closed for reasons such as lack of jurisdiction or abandonment of the asylum application, USCIS uses different terms to address the lifespan of a case, including both ''process time'' and ''cycle time''. Generally, ''processing time'' is the time from receipt to completion for each individual form and can be averaged over a specific period of time in the past, but does not take into account currently pending applications and is not used for projections. ''Cycle time'' is defined as how many months' worth of receipts represents the current pending case volume. This is an internal metric that can be used for projections because it takes into account current pending volume, anticipated receipts, and expected completions. As an internal management metric, cycle times are generally comparable to the agency's publicly posted median processing times. Cycle times are what the operational divisions of USCIS use to gauge how much progress the agency is, or is not, making on reducing our pending affirmative asylum caseload and overall case processing times. DHS would pause the acceptance of initial (c)(8) EAD applications when the average processing time for all affirmative asylum applications over a consecutive period of 90 days adjudication exceeds 180 days. Acceptance of initial (c)(8) EAD applications would resume when the average processing time for affirmative asylum adjudication over a consecutive period of 90 days is less than or equal to 180 days. The proposed provisions to pause and re-start EAD application acceptance only impact initial (c)(8) EAD applications. Thus, even in a period in which USCIS has paused the acceptance of initial (c)(8) EAD applications due to asylum application processing times, USCIS will continue to receive and adjudicate renewal (c)(8) EAD applications, as well as EAD applications in other eligibility categories.

The rule would require the USCIS Director to review affirmative asylum application processing times for the purpose of determining whether USCIS' (c)(8) EAD application acceptances would be paused or restarted. This requirement would begin on the effective date of the final rule and the Director would conduct the first required review of asylum application processing times after the first 90-day period thereafter. Based on recent processing times, USCIS anticipates that the Director will institute an initial pause on asylum EAD adjudications following that review. The USCIS Director's determination is not discretionary, and the determination to pause or restart acceptance of initial (c)(8) EAD applications is directly tethered to the processing times of all affirmative asylum applications over the previous 90-day period. DHS proposes to notify the public of any such processing changes and provide the supporting processing times through USCIS website announcements.

D. Summary of Benefits and Costs

DHS expects that this proposed rule will generate substantial benefits. As discussed later in this preamble, the asylum system is overwhelmed, federal adjudications resources are strained, and the affirmative asylum application backlog serves as a magnet pulling aliens into the U.S. illegally. The surge in both asylum filings and associated EADs over the past few years has created an untenable situation. This proposed rule would benefit USCIS by allowing it to operate under long-term, sustainable case processing times for initial EAD applications for asylum applicants, to allow sufficient time to address national security, public safety, or fraud concerns, and to maintain technological advances in document production and identity verification. Just as the 1994 INS rulemaking referenced below, DHS expects that this action would reduce frivolous and fraudulent asylum claims and perverse economic incentives to obtain an EAD under meritless asylum claims. 59 FR 14779 (Mar. 30, 1994); 59 FR 62284 (Dec. 5, 1994). Frivolous, fraudulent, and meritless asylum applications and related filings for employment authorization can serve as a magnet for illegal immigration and generate costs to localities, states, the national economy, and strain resources. These costs could include public assistance and additional local or state resources used to assist aliens, and this rule would potentially mitigate some of these costs. DHS expects that these changes would reduce confusion regarding EAD requirements for aliens with pending asylum applications and the public, help ensure the regulatory text reflects current DHS policy and more faithfully implements the intent of the statute while simultaneously improving program integrity. DHS cannot currently quantify all of the potential benefits of this proposed rule.

In addition, if employers are able to hire American workers to fill the jobs the asylum applicants would otherwise hold, the change in earnings to such aliens would constitute beneficial wage and benefit transfers to American workers and would potentially pose no productivity loss or costs to employers. While it is possible that aliens without work authorization could require assistance from their social and support networks, which could include public entities, there could be a counterbalance; as this rule potentially will reduce immigration, there could be less of an economic strain on states, local government, and non-governmental organizations, in terms of any public assistance and resources that are currently provided to asylum applicants. Furthermore, DHS anticipates this proposed rule would decrease illegal migration and fraudulent claims for asylum applications and EADs.

Many of the impacts described above will be indirect, unquantifiable benefits resulting from this proposed rule. DHS cannot estimate these potential indirect impacts (whether costs, benefits, transfers) or second order effects and beyond, as they are beyond the scope of this analysis. This rulemaking seeks to reduce frivolous, fraudulent, and meritless asylum applications and their associated applications for (c)(8) EADs while improving the administrative process for issuance of employment authorization documents for aliens with meritorious asylum applications at USCIS.

[4] A settlement in *Garcia Perez* v. *DHS,* 2:22–cv–806 (W.D. Wash. 2022) was approved in September 2024 after class members challenged EOIR and USCIS policies and procedures regarding the 180-day Asylum EAD Clock. Among other provisions, the *Garcia Perez* settlement provides asylum applicants with an ability to obtain information about their Asylum EAD Clock and challenge the reason for any stops to the clock. The current mechanism to do this will be simplified by conversion to a 365-calendar day calculation. To the extent that there is conflict between the settlement agreement and the 365-calendar day calculation, this rule change would supersede the *Garcia Perez* settlement agreement, which contains a clause acknowledging the settlement agreement does not preclude future regulatory or statutory changes. *See* Garcia Perez Settlement Agreement, Section II.C.7—*Impact of Statutory, Regulatory, or Precedential Changes, and/or Operational Needs.*

Requiring aliens to submit biometrics collections for both initial and renewal requests for employment authorization would enable DHS to vet an alien's biometrics against government databases to determine if he or she matched any criminal activity on file, to verify the alien's identity, and to facilitate card production. In addition, biometrics collection enables DHS to confirm that individuals are not utilizing multiple identities or that multiple individuals are not utilizing one identity. Lastly, from biometrics collections DHS would increase program integrity by ensuring that only eligible aliens who continued to pursue asylum were applying for and obtaining work authorization, because those who have abandoned their asylum applications or who do not have a genuine need for asylum may be less likely to appear for biometrics collection. This would also generally provide a benefit for the public because it would increase transparency pertinent to application and filing requirements. As discussed in the preamble, the asylum program has been subject to identity fraud concerns historically.

The impacts of this proposed rule include both potential distributional effects (which are transfers) and costs. The potential distributional impacts fall on the asylum applicants who may be delayed in entering the U.S. labor force or who may not obtain an EAD due to being ineligible (*e.g.,* aggravated felon, serious non-political crime, etc.) or due to a processing pause. The potential distributional impacts (transfers) would be in the form of lost opportunity to earn compensation (wages and benefits). A portion of this lost compensation might be transferred from asylum applicants to others that are currently employed in the U.S. labor force, possibly in the form of additional hours worked or overtime pay. A portion of the impact of this rule may also be borne by companies that would have hired the asylum applicants had they been eligible for an EAD or in the labor market earlier. However, if the affected employer were unable to find available workers, these companies could incur a cost to productivity and potential profit.

Companies may also incur opportunity costs by having to choose the next best alternative to immediately filling the job the asylum applicant would have filled. USCIS does not know what this next best alternative may be for those companies. As a result, USCIS does not know the portion of overall impacts of this rule that are transfers or costs. If companies can find replacement labor for the position the asylum applicant would have filled, this rule would have primarily distributional effects in the form of transfers from asylum applicants to others already in the labor market (or workers induced to return to the labor market). USCIS acknowledges that there may be additional opportunity costs to employers such as additional search costs. However, if companies cannot find a reasonable substitute for the labor an asylum applicant would have provided, the effect of this rule would primarily be a cost to these companies through lost productivity and profits.

USCIS uses the changes to earnings to asylum applicants as a measure of the overall impact of the rule—either as distributional impacts (transfers) or as a proxy for businesses' cost for lost productivity. It does not include additional costs to businesses for lost profits and opportunity costs or the distributional impacts for those in an applicant's support network. The lost compensation to these asylum applicants could range from $34.6 billion to $126.6 billion annually (undiscounted) depending on the wages the asylum applicant would have earned and other factors. The 5-year total discounted lost compensation to asylum applicants at 3 percent could range from $155.4 billion to $568.6 billion and at 7 percent could range from $135.5 billion to $495.8 billion (FY 2025 through FY 2029).

The quantified estimates may be overstated, as they assume that without this rule (*i.e.* under the baseline) the EAD validity period would be longer than is currently permitted.[5] Since USCIS has reduced the maximum EAD validity period for aliens with pending asylum applications to 18 months, recipients must renew more often, which could result in fewer pending asylum applicants authorized to work over the 5-year period of analysis. This reduction would result from attrition in renewal applications and more frequent vetting.

There could be tax impacts pertinent to earnings changes. Asylum applicants who could be delayed or precluded from obtaining an EAD may generate forgone federal and state taxes. However, as was noted above, the strain on resources that could be mitigated due to the effects of this rule could counterbalance some or all of the tax losses, if there are any. Additionally, if the earnings are transferred to American workers, there may be no loss of taxes.

This rule could possibly result in reduced opportunity costs to the Federal Government. Since the *Rosario* court order, 365 F. Supp. 3d 1156 (W.D. Wash. 2018), compelled USCIS to comply with the 30-day processing timeframe provision in FY 2018, USCIS has redistributed its adjudication resources to work up to compliance. By extending the 30-day processing timeframe to 180 days, it is possible that resources could be reallocated, which could have the effect of reducing delays in processing status-granting benefit requests, and avoiding costs associated with hiring additional employees. However, there are many factors that could influence such processing. Additionally, if asylum filings decline, as this rule generates a disincentive to meritless claims with the goal of obtaining an EAD, then the public and the Federal Government could experience operational and cost efficiencies as it is based on adjudicating fewer asylum claims. DHS does not rule out that there could be resources allocated to other operational areas.

Table 1 provides a detailed summary of the regulatory changes and the expected impacts of proposed rule's provisions. USCIS estimates the primary impact of the rule would result from a pause in accepting all new initial (c)(8) EAD applications until USCIS' affirmative asylum applications processing time reach a 180-day average (Module 1). Additionally, USCIS provides impacts for provisions that would affect applicants (for initial and renewal EADs) when the pause is lifted (Module 2). However, USCIS does not include Module 2 in the total rule impact, because the Module 1 impacts (pause EADs) already accounted for impacts to all new EAD applicants. To include Module 2 would be double counting the impacts for the same population. Where a monetized figure is presented, it is based on a 7 percent annualized average, and the annual population is the midpoint of a high-low range.

BILLING CODE 9111–97–P

[5] Effective December 5, 2025, USCIS reduced the maximum EAD validity period for aliens with pending asylum applications to 18 months. *See* USCIS, Policy Alert, ''Updating Certain Employment Authorization Document Validity Periods'' (Dec. 4, 2025), *https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20251204-EmploymentAuthorizationValidity.pdf.*

Table 1. Summary of Proposed Provisions and Estimated Impacts.		
Proposed Provision (proposed CFR)	**Proposed Regulatory Changes**	**Estimated Impact of Regulatory Change**
Amend 8 CFR 208.3(c)(3), Form of application	Asylum applications filed with USCIS must be in accordance with § 103.2(a)(7) of this chapter and the form instructions. If the application does not comply with the requirements, it will be deemed incomplete and USCIS will reject and return the application; an application that was rejected may be resubmitted.	Annual Population: 503,000. Impact: Unknown. Quantitative estimate: Not Estimated. Qualitative description: USCIS would gain operational efficiency, and the general public would benefit because it would essentially instill one set of rules governing the submission of benefit requests, as opposed to the current state with two materially different sets of rules. This will generate more efficient and effective decisions on asylum applications as officers are currently required to obtain omitted information at interview.
Require Biometrics for Asylum EAD applications.	Require all applicants for a (c)(8) EAD to submit biometrics. If an alien fails to appear for biometrics submission, the alien's application for employment authorization would be denied.	Population: 503,000. Impact type: costs to asylum applicants and USCIS. Quantitative estimate: Not Estimated. Qualitative description: There would be a travel and time cost to aliens to submit biometrics for affected aliens as well as costs to USCIS to collect biometrics. Biometrics collections will enable DHS to minimize known identity fraud concerns by verifying that aliens are not utilizing multiple identities or that multiple aliens are not utilizing one identity; will enable DHS to vet an alien's biometrics to determine matches to any criminal activity on file, to verify the alien's identity, and to facilitate card production.[6]

Increasing the wait period for initial EAD filing from 180 to 365 days.	Except in the case of an alien who filed an asylum application prior to January 4, 1995, requires employment authorization application to be submitted no earlier than 365 calendar days after the date on which a complete asylum application is submitted. EAD applications filed before waiting period will be denied. If an asylum application has been rejected and returned as incomplete the 365-day waiting period will commence upon the date of receipt of the complete asylum application.	Quantitative (Module 2 results): Population impacted: Provision would cover total population, but DHS estimates impacts will accrue to about 224,000 defensive cases. Impact type: Transfers, taxes, filing costs. Quantitative estimate: Earnings change: $6.3 billion with Federal tax impact of $0.66 billion; the earnings and taxes lost could represent a transfer if replacement labor is available for the delayed period. Qualitative description: If the average USCIS processing time for adjudicating asylum applications is less than or equal to 180 days for a period of 90 consecutive days, USCIS will accept (c)(8) EAD applications according to the proposed 365 calendar-day waiting period for pending asylum applications. For the defensive population not subject to proposed bars, there may be a minor form time burden increase of 0.34 hours. Benefit: Increasing the period for filing from 180 days to 365 days permits USCIS to focus resources on the underlying asylum applications which, if adjudicated first, obviates the need to adjudicate the pending (c)(8) EAD applications. Further, the increase may reduce or limit fraudulent, frivolous, and meritless asylum applications (e.g., knowing the alien must wait 1 year to file for an EAD, etc.).
Increasing USCIS EAD processing timeframe from 30 to 180 days.	Processing Timeframe for initial applications for employment authorization received on or after the effective date of the final rule under this section, USCIS will have 180 days to adjudicate an initial application for employment authorization, except for those applications requiring additional review for background checks or vetting.	Quantitative (Module 2 results): Population impacted: Provision would cover total population, but DHS estimates impacts will accrue to about 224,000 defensive cases. Impact type: costs, transfers, taxes Quantitative estimate: Earnings change: $6.3 billion with Federal tax impact of $0.66 billion; the earnings and taxes lost could represent a transfer if replacement labor is available for the delayed period. Qualitative description: By extending the 30-day (c)(8) EAD adjudications timeframe to 180-day, USCIS would be able to shift resources from the (c)(8) EAD workload to adjudications with backlogs. Additionally, having more than 30 days to adjudicate the (c)(8) EAD would provide USCIS additional time for screening and vetting, which would increase program integrity and help identify national security and public safety threats, which are significant benefits to the immigration system.

EAD Eligibility Bars: Proposed criteria for EAD ineligibility for asylum applicants.	Changes to asylum applicants who are ineligible for employment authorization. As is detailed fully in section II. B. 2. E-F, including exceptions and circumstances, an applicant for asylum is not eligible for employment authorization if: (A) There is reason to believe that the alien may be barred from a grant of asylum due to significant criminal grounds; (B) An asylum officer or an Immigration Judge has denied the alien's application within the 365 calendar-day waiting period or before the adjudication of the initial request for employment authorization; (C) The applicant filed their asylum application on or after the effective date of the final rule and filed the application after the 1-year filing deadline; (D) The applicant is an alien who entered or attempted to enter the United States at a place and time other than lawfully through a U.S. port of entry.	Quantitative (Module 2 results): Population: minimum 96,000 Impact type: costs, transfers, taxes Quantitative estimate: Earnings change: $15.1 billion with Federal tax impact of $1.6 billion; the earnings and taxes lost could represent a transfer if replacement labor is available for the delayed period. Benefit: Prohibiting approval of (c)(8) EAD applications to aliens who are ineligible for asylum, including aliens who may be barred from a grant of asylum due to one of the criminal bars to asylum under sections 208(b)(2)(A)(ii)-(iii) and where the alien, except an alien who meets the definition of an unaccompanied alien child, as defined in 6 U.S.C. 279(g), filed his or her asylum application after the one year filing deadline would increase program integrity by ensuring that criminal aliens and other aliens not eligible for asylum are not granted immigration benefits, including work authorization. This would also reduce or limit a substantial incentive for filing fraudulent, frivolous, and meritless asylum applications (e.g., knowing an alien with any one of these types of crimes would be denied an EAD, etc.).
USCIS may use derogatory information from an EAD application to prioritize asylum application, denying asylum sooner.	Derogatory information. If USCIS discovers derogatory information during the adjudication of an application for employment authorization for an alien with a pending asylum application, USCIS may prioritize the alien's asylum application for adjudication.	Population: Unknown. Impact type: costs, transfers. Qualitative Description: Costs and Transfers: If individuals are denied an EAD, it would likely reduce their earnings and tax payments, which could be transfers to other American workers. Benefits: Would benefit USCIS processing because currently USCIS processes asylum applications in a "last in, first out" order. This will increase efficiency (e.g., denying asylum applications sooner, reducing asylum backlog, etc.) and is a logical and rational way to handle cases (e.g., adjudicating all pending benefit requests based on the same derogatory information). This proposed prioritization would likely result in applicants that would have been denied asylum to be brought in for processing faster.
USCIS may pause the issuance of EADS.	(2)(i) Pausing and Restarting Acceptance of Initial Applications for Employment Authorization. Beginning on the effective date of the final rule and anytime thereafter, if the average USCIS processing time for adjudicating affirmative asylum applications is greater than 180 days for all	Population: 503,000. Impact type: earnings change, taxes, cost-savings. Quantitative estimate: earnings change of $70.4 billion and Federal government taxes

	applications for asylum currently pending before USCIS for a period of 90 consecutive days, USCIS will not accept initial applications for employment authorization. If the average USCIS processing time for adjudicating affirmative applications is less than or equal to 180 days for a period of 90 consecutive days, USCIS will again accept initial applications for employment authorization. The preamble provides information concerning the basis for decision of pause and announcement of pause and publication of processing times.	of $7.4 million; aliens would experience a cost-savings from not filing.[7] Qualitative: Pausing acceptance of (c)(8) EAD applications when the average USCIS processing time for adjudicating asylum applications is greater than 180 days for a period of 90 consecutive days, permits USCIS to focus resources on the underlying asylum applications which, if adjudicated first, obviates the need to adjudicate the pending (c)(8) EAD applications. Further, tethering (c)(8) EAD application acceptance to asylum processing times may reduce or limit a substantial pull factor for filing fraudulent, frivolous, and meritless asylum applications (e.g., knowing the alien must wait 1 year to file for an EAD, etc.). Finally, the tethering will eliminate the potential that USCIS will again find itself in the situation it is currently in where large asylum backlogs attract frivolous, fraudulent, or otherwise meritless asylum filings seeking ancillary benefits. The implementation of this tether will permanently eliminate the possibility that asylum backlogs may serve as a magnet attracting illegal immigration.
Additional requirements.	Renewal. Employment authorization shall be renewable, in increments to be determined by USCIS, for the continuous period of time necessary for the asylum officer or Immigration Judge to decide the asylum application and, if necessary, for completion of any administrative or judicial review. The alien must request renewal of employment authorization on the form and in the manner prescribed by USCIS and according to the form instructions, with the appropriate fee, and, if required by USCIS, must submit biometrics at a scheduled biometrics services appointment in accordance with § 103.2(b)(9) of this chapter. USCIS requires that an alien establish that he or she has continued to pursue an asylum	Quantitative: Impact type: transfers, taxes Population: Full population unknown. Quantitative: DHS estimates impacts for about 160 affirmative asylum denials with EADS; $0.01 billion in earnings and $0.001 in Federal taxes. Qualitative: Modifying the requirements for renewal (c)(8) EAD applications, including adding the requirement to submit biometrics, but also requiring that the alien establish he or she continued to pursue asylum, would increase program integrity by ensuring that only eligible aliens who continued to pursue asylum were applying for and obtaining work authorization. This would also generally provide a benefit for the public by

	application before an Immigration Judge or sought administrative or judicial review. For purposes of employment authorization, pursuit of an asylum application is established by presenting one of the following, depending on the stage of the alien's immigration proceedings: (1) If the alien's case is pending in proceedings before the Immigration Judge, and the alien wishes to continue to pursue his or her asylum application, a copy of any asylum denial, referral notice, or of the charging document placing the alien in such proceedings; (2) If the Immigration Judge has denied asylum, a copy of the document issued by the Board of Immigration Appeals to show that a timely appeal has been filed from a denial of the asylum application by the Immigration Judge; or (3) If the Board of Immigration Appeals has denied or dismissed the alien's appeal of a denial of asylum, or sustained an appeal by DHS of a grant of asylum, a copy of the petition for judicial review or for habeas corpus pursuant to section 242 of the Act, date stamped by the appropriate court. (c) *Termination.* In addition to the termination and revocation provisions under 8 CFR 274a.14, employment authorization granted under this section shall terminate as follows, even if the expiration date specified on the employment authorization document has not been reached: (1) immediately following the denial of an asylum application by an asylum officer, unless the case is referred to an Immigration Judge; (2) on the date that is 30 days after the date on which an Immigration Judge denies an asylum application, unless the alien makes a timely appeal to the Board of Immigration Appeals; or (3) immediately following the denial or dismissal by the Board of Immigration Appeals of an appeal of a denial of an asylum application. (c)(8) An alien who has a pending application for asylum or withholding of deportation or removal pursuant to part 208 of this chapter. Employment authorization may be granted according to the provisions of §208.7 of this chapter in increments to be determined	increasing transparency on application and filing requirements. USCIS believes this update would also reduce or limit a substantial incentive for filing fraudulent, frivolous, and otherwise meritless asylum applications (e.g., knowing an alien must affirmatively establish that he or she continued to pursue asylum and could not simply repeatedly file a renewal (c)(8) I-765 solely to obtain employment authorization). With respect to the termination provisions, with few exceptions, immediately and automatically terminating (c)(8) EADs upon denial of the asylum application by either USCIS or an Immigration Judge, rather than 60 days after denial or after EAD expiration, whichever is later, would benefit USCIS operationally since the change removes the separate requirement for terminating the EAD upon denial of the asylum application. This is a significant benefit for USCIS given asylum applications have low associated filing fees. As such, it would help USCIS to reduce the number of notices that must be issued when adjudicating applications with low associated filing fees.

	by USCIS and will expire on a specified date.	
	(1) The approval of applications filed under § 274a.12(c) is within the discretion of USCIS. Where economic necessity has been identified as a factor, the alien must provide information regarding his or her assets, income, and expenses. (2) An application for an initial employment authorization or for a renewal of employment authorization filed in relation to a pending claim for asylum or withholding of removal must be filed and adjudicated in accordance with § 208.7.	Qualitative: By making this a discretionary adjudication, USCIS would generally not approve EADs for aliens with criminal arrests and convictions, which in turn: promotes the integrity of the immigration system, makes U.S. workplaces safer, and removes a pull factor for aliens to remain in the United States (e.g., whether the alien warrants a favorable exercise of discretion).

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In addition to the information presented in Table 1, details and an A–4 accounting statement are provided in Section VI (Statutory and Regulatory Requirements) of the proposed rule.

[6] *See* Office of the Inspector General, OIG–16–130 ''Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records'' (Sept. 8, 2016), *https://www.oig.dhs.gov/reports/2016-09/potentially-ineligible-individuals-have-been-granted-uscitizenship-because,* finding ''During immigration enforcement encounters with aliens, CBP and ICE take fingerprint records. These components and their predecessor, INS, used to collect aliens' fingerprint on two paper cards. One card was supposed to be sent to the FBI to be stored in its repository. The other fingerprint card was to be placed in the alien's file with all other immigration related documents.'' Ultimately finding that ''As long as the older fingerprint records have not been digitized and included in repositories, USCIS risks making naturalization decision without complete information and, as a result, naturalizing additional individuals who may be ineligible for citizenship or who may be trying to obtain U.S. citizenship fraudulently.'' *See also* Office of the Inspector General, DHS, ''Individuals with Multiple Identities in Historical Fingerprint Enrollment Records Who Have Received Immigration Benefits'' DHS–OIG 17–111 (Sept. 25, 2017), *https://www.oig/dhs.gov/sites/default/files/assets/2017/OIG-17-111-Sep17.pdf,* ''Individuals with Multiple Identities in Historical Fingerprint Enrollment Records Who Have Received Immigration Benefits'' finding ''from this data set, we determined that, as of April 24, 2017, 9,389 aliens USCIS identified as having multiple identities had received an immigration benefit'' and that ''10 percent of cases, but not discussed in this report, include applications for asylum and travel documents.''

[7] DHS caveats that the quantified estimates are currently overstated due to the change in the maximum EAD validity period for aliens with pending asylum applications to 18 months. USCIS will consider the recent change and incorporate updates where appropriate in the final rule to reflect this change.

E. Legal Authority

The Secretary's authority for the proposed regulatory amendments is found in various sections of the INA, 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 proposed 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.[8]

Additional authority for this 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 discretionary authority to extend employment authorization to aliens in the United States; [9]
- Sections 208(d)(1) and (d)(5)(B) of the INA, 8 U.S.C. 1158(d)(1) and (d)(5)(B), which authorize the Secretary to establish regulations concerning the procedures and conditions on asylum applications;
- Section 208(d)(2) of the INA, 8 U.S.C. 1158(d)(2), which provides the Secretary discretion to grant employment authorization to applicants for asylum if 180 days have passed since filing an application for asylum;
- Section 101(b)(1)(F) of the HSA, 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;'' and
- Section 271(a)(3) of the HSA, 6 U.S.C. 271(a)(3), which confers authority on the Director of USCIS to establish ''policies for performing [immigration adjudication] functions.''

[8] Although several provisions of the INA discussed in this proposed rule refer exclusively to the ''Attorney General,'' such provisions now refer to the Secretary by operation of the HSA. *See* 6 U.S.C. 202(3), 251, 271(b), 542 note, and 557; 8 U.S.C. 1103(a)(1) and (g) and 1551 note; *Nielsen* v. *Preap,* 586 U.S. 392, 397 n.2 (2019).

[9] Courts have acknowledged that Congress delegated authority to DHS to grant or extend employment authorization to certain classes of aliens. *See, e.g., Washington Alliance of Technology Workers* v. *DHS,* 50 F.4th 164, 191–92 (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, and 274A(h)(3) of the INA, 8 U.S.C. 1103, 1158, and 1324a(h)(3), as well as the Administrative Procedure Act (APA) 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).

F. Severability

The Department intends for the provisions of this proposed rule, if finalized, to be severable from each other and to be given effect to the maximum extent possible, such that if a court were to hold that any provision is invalid or unenforceable as to a particular alien or circumstance, the other provisions will remain in effect as to any other alien or circumstance. For example, if a court of competent jurisdiction were to hold that the proposed amendments to the regulations under 8 CFR 208.7(a)(2) alone should be enjoined or should be vacated for some reason, it is the intent of DHS that such court would narrowly construe its decision and leave the remainder of the rule in place with respect to all other covered aliens and circumstances. While the various provisions of this proposed rule, taken together, would provide maximum benefit with respect to improving the integrity of both the asylum program and employment authorization benefits process, strengthening the Department's national security and public safety posture, and decreasing the strain on operational resources, none of the provisions are fully interdependent and unable to operate separately.

DHS recognizes that the proposed provisions at 8 CFR 208.7(a)(1)(i), 8 CFR 208.7(a)(1)(iv), and 8 CFR 208.7(a)(1)(v) are related to each other, but they may still exist independently. The proposed amendments at 8 CFR 208.7(a)(1)(iv) would expand the list of criminal ineligibilities for employment authorization, including the incorporation of criminal bars to asylum, specifically where there is reason to believe that the applicant may be barred from a grant of asylum due to one of the criminal bars to asylum under sections 208(b)(2)(A)(ii)–(iii) and the proposed amendments at 8 CFR 208.7(a)(1)(v) would allow DHS to prioritize for adjudication asylum applications for which derogatory information is discovered during the EAD adjudications. These proposed provisions would be strengthened by the proposed provision at 8 CFR 208.7(a)(1)(i), which requires biometrics for all aliens applying for EADs based on pending asylum applications. This new categorical biometrics provision would allow DHS to conduct more in-depth screening and vetting, thus providing a more complete, comprehensive, and accurate view of the alien's criminal history. However, even if USCIS could not implement the categorical biometrics provision, the Department could still apply the criminal ineligibility grounds and derogatory information provisions to the EAD adjudication by reviewing other available evidence in the record or available in government systems.

III. Background and Purpose

A. Introduction

On January 20, 2025, President Donald J. Trump issued a Presidential Proclamation declaring that a national emergency exists at the southern border of the United States [10] and a Presidential Proclamation stating that the circumstances of the emergency qualify as an invasion under Article IV, Section 4, of the Constitution of the United States.[11] Stating that the number of aliens encountered along the southern border of the United States over the course of the prior administration had overwhelmed the U.S. immigration system and rendered many of the INA's provisions to control the entry and exit of people and goods across the borders of the United States ineffective, the President invoked emergency tools to suspend the physical entry of aliens involved in an invasion into the United States across the southern border and provide additional authorities and resources to support the Federal Government's response.[12]

On the same day, the President issued Executive Order (E.O.) 14159, Protecting the American People Against Invasion, to ensure ''that the Federal Government protects the American people by faithfully executing the immigration laws of the United States.'' [13] The E.O. also directed the Secretary to ensure ''that employment authorization is provided in a manner consistent with section 274A of the INA (8 U.S.C. 1324a), and that employment authorization is not provided to any unauthorized alien in the United States.'' [14]

Through this proposed rule, DHS is addressing, in part, the President's national emergency and invasion at the southern border declarations by: (1) reducing incentives for aliens to file frivolous, fraudulent, or otherwise meritless asylum applications intended primarily to obtain employment authorization and to remain in the United States for years due to the current backlog of asylum cases; (2) disincentivizing illegal entry into the United States by providing that, on or after the effective date of the final rule, any alien who enters or attempts to enter the United States at a place and time other than lawfully through a U.S. port of entry will be ineligible to receive a (c)(8) EAD, with limited exceptions; (3) reducing opportunities for fraud; and (4) protecting USCIS' ability to have sufficient time and resources to receive, meaningfully screen and vet, and process initial (c)(8) EAD applications, while also protecting the security-related processes undertaken for each employment authorization application. This rule also aims to address the increased public safety and national security concerns exacerbated by large numbers of aliens illegally crossing the border and overwhelming the U.S. immigration system. DHS is also proposing reforms that will ease many of the burdens USCIS faces in accepting and adjudicating applications for asylum and related employment authorization.

As explained more fully later in this preamble, these reforms will help mitigate the crisis that our immigration and asylum systems are facing as a consequence of the mass migration of aliens across the southern border, and improve the current asylum backlog by discouraging new frivolous, fraudulent, or otherwise meritless asylum applications and freeing DHS resources to focus on applications in the current backlog, helping to clear the way for meritorious asylum applications to be received, processed, and adjudicated more quickly.

The existing asylum backlog has engendered a flood of litigation by aliens with pending asylum applications alleging unreasonable delay of their applications that has significantly drained the resources of USCIS and the U.S. Department of Justice (DOJ) to resolve. In fact, petitions for writs of mandamus [15] related to affirmative asylum cases have been on the rise in recent years, from 1,545 in FY 2022 to 4,093 in FY 2023 to 5,187 cases in FY 2024.[16] Affirmative asylum cases with mandamus actions further stymie progress on affirmative asylum backlog reduction because USCIS must prioritize responses to and adjudication of certain mandamus affirmative asylum

[10] Proclamation 10886 of Jan. 20, 2025, ''Declaring a National Emergency at the Border'', 90 FR 8327, 8328 (Jan. 29, 2025).

[11] Proclamation 10888 of Jan. 20, 2025, ''Guaranteeing the States Protection Against Invasion,'' 90 FR 8333, 8335 (Jan. 29, 2025).

[12] *Id.*

[13] E.O. 14159 of Jan. 20, 2025, ''Protecting the American People Against Invasion,'' sec. 1, 90 FR 8443 (Jan. 29, 2025).

[14] *Id.* at sec. 16(c), 90 FR 8446.

[15] A Writ of Mandamus is a district court filing used to compel an agency to perform a duty owed to the plaintiff. USCIS may expedite cases for aliens with long-standing asylum claims who use this style of litigation to seek action.

[16] USCIS internal data, Office of the Chief Counsel, Form I–589 Mandamus Statistics, May 22, 2025.

cases. This creates a cyclical issue because mandamus actions force USCIS to reallocate resources to meet the court deadlines by pulling officers off either recent or backlog adjudications, which leads to increased processing times for other pending asylum applications.[17] Adopting the provisions described in this proposed rule would give aliens with meritorious asylum claims the predictability they deserve but are currently denied because of the backlog of asylum claims clogging the system. The extensive resources required to process pending asylum applications generally extends the time to process meritorious asylum claims.

Additionally, illicit organizations, including designated Foreign Terrorist Organizations (FTOs),[18] benefit financially by smuggling aliens into the United States, and, upon arrival in this country, many aliens then apply for asylum or other immigration benefits. A 2023 congressional report stated that aliens routinely paid smuggling organizations more than $10,000 to $15,000 to facilitate the journey across the southwest border, with drug cartels playing an increasingly influential role in human smuggling.[19] It is estimated that cartel revenue from human smuggling is in the billions of dollars, with cartels operating in the Del Rio Sector alone making around $1.5 billion a year.[20] Recently designated FTOs, including Cartel Del Golfo (Gulf Cartel), Cartel Del Noreste, and Mara Salvatrucha (MS–13) continue to engage in dangerous and often fatal human smuggling operations, bringing vulnerable men, women, and children to the United States illegally.[21] By nature, these organizations engage in illegal and often extremely violent activities; therefore, this strategic exploitation of the immigration system by FTOs constitutes a massive national security and public safety threat.

DHS expressly recognizes that there are many populations with reliance interests on the current regulatory framework for (c)(8) EAD applications, including aliens applying for asylum, employers, and state and local communities. These interests include the aliens with meritorious asylum claims desiring to access employment authorization faster and with fewer requirements so that they might become financially independent sooner, the need for employers to more readily access a pool of employment-authorized aliens, and a state or community's economic need for newly arrived aliens to sustain themselves and contribute to the economy. DHS acknowledges that this rule may negatively impact potentially meritorious asylum applicants who may decide not to file for asylum because they cannot afford to wait the extended period before applying for employment authorization. These aliens, who may otherwise have strong asylum claims, may have family responsibilities, medical, or other financial burdens, that make it extremely difficult for them to wait 365 calendar days, or potentially many years due to the pause and restart provisions of this rule, to file for employment authorization while their asylum application is pending. DHS also recognizes that extending the processing time for employment authorization may also factor into a potentially meritorious applicant's decision-making process before applying for asylum. Due to this rule and the increased waiting periods before an alien may receive employment authorization, there may be aliens with potentially meritorious asylum claims who instead return to a country where they may fear harm. DHS has seriously considered the harm to this potential population, and, while these interests are relevant and justified, DHS has determined that they are outweighed by the needs of the Federal Government to protect U.S. national security, public safety, and the overall integrity of the asylum program, as well as sustain an operationally efficient immigration system.[22] The asylum program and the immigration system are heavily burdened and overwhelmed, and this has led to a massive pending affirmative asylum caseload.[23] This pending affirmative asylum caseload weakens the integrity of the system, allowing thousands of non-meritorious cases to languish and obstructing the agency from identifying potential public safety and national security concerns until years later when the cases are finally adjudicated. The security of the United States and the integrity of our immigration processes outweigh the potential harm to a subset of the asylum applicant population. Additionally, there is no justified reliance on the current regulations for the purpose of exploiting the immigration system through filing fraudulent, frivolous, or otherwise meritless asylum cases primarily to access employment authorization. Removing this potential abuse as a pull factor for illegal immigration should decrease the number of illegal border crossers and outweighs reliance on the current regulations. Finally, many asylum seekers may have existing support networks of family, friends, and community members, including other asylees and refugees, who are able to alleviate the financial burdens caused by the longer wait to receive employment authorization. These communities provide a significant and positive national fiscal impact and may support those who are not yet employment authorized.[24] Therefore, reliance interests are limited to the employment of aliens who are already present in the United States at the time

[17] Office of Inspector General, DHS, ''USCIS Faces Challenges Meeting Statutory Timelines and Reducing Its Backlog of Affirmative Asylum Claims'' (July 3, 2024), *https://www.oig.dhs.gov/sites/default/files/assets/2024-07/OIG-24-36-Jul24.pdf. See also* Citizenship and Immigration Services Ombudsman, DHS, ''Annual Report 2022'' (June 30, 2022), *https://www.dhs.gov/sites/default/files/2022-07/2022%20CIS%20Ombudsman%20Report_verified_medium_0.pdf.*

[18] Bureau of Counterterrorism, DOS, ''Designated Foreign Terrorist Organizations,'' *https://www.state.gov/foreign-terrorist-organizations/* (last visited May 23, 2025); E.O. 14157 of Jan. 20, 2025, ''Designating Cartels and Other Organizations as Foreign Terrorist Organizations and Specially Designated Global Terrorists,'' 90 FR 8439 (Jan. 29, 2025).

[19] U.S. Congress, House of Representatives, Committee on Homeland Security Majority Report, *Phase 2 Interim Report,* 118th Cong., 1st sess., Sept. 7, 2023, *https://homeland.house.gov/wp-content/uploads/2023/09/09.07-Phase-2-Final.pdf.*

[20] U.S. Congress, House of Representatives, Committee on Homeland Security Majority Report, *Phase 2 Interim Report,* 118th Cong., 1st sess., Sept. 7, 2023, *https://homeland.house.gov/wp-content/uploads/2023/09/09.07-Phase-2-Final.pdf.*

[21] ICE, ''Cartel Del Noreste Members Sent to Prison for Roles in Cartel-Linked Human Smuggling Scheme'' (Nov. 4, 2024), *https://www.ice.gov/news/releases/cartel-del-noreste-members-sent-prison-roles-cartel-linked-human-smuggling-scheme;* DOJ, ''Fatal human smuggling case and two alleged MS–13 members among those charged in relation to immigration and border security'' (Apr. 4, 2025), *https://www.justice.gov/usao-sdtx/pr/fatal-human-smuggling-case-and-two-alleged-ms-13-members-among-those-charged-relation;* DOS, ''In Dual Actions, Treasury Sanctions Clan Del Golfo Leadership in Colombia and Businesses'' (Sept. 25, 2024), *https://pa.usembassy.gov/in-dual-actions-treasury-sanctions-clan-del-golfo-leadership-in-colombia-and-businesses-owned-by-sinaloa-cartel-fentanyl-traffickers-in-mexico/;* DOJ, ''Law Enforcement Cooperation Between United States and Mexico Results in Mexican Takedown of Cartel-Linked Alien Smugglers,'' (Feb. 20, 2025), *https://www.justice.gov/opa/pr/law-enforcement-cooperation-between-united-states-and-mexico-results-mexican-takedown-cartel.*

[22] *See Dep't of Homeland Sec.* v. *Regents of the Univ. of California,* 140 S. Ct. 1891, 1914 (2020). (''And, even if DHS ultimately concludes that the reliance interests rank as serious, they are but one factor to consider. DHS may determine, in the particular context before it, that other interests and policy concerns outweigh any reliance interests.'').

[23] USCIS, ''Number of Service-wide Forms By Quarter, Form Status, and Processing Time'' (Apr. 30, 2025), *https://www.uscis.gov/sites/default/files/document/data/quarterly_all_forms_fy2025_q1.xlsx.*

[24] U.S. Department of Health and Human Services, ''The Fiscal Impact of Refugees and Asylees Over 15 Years: Over $123 Billion in Net Benefit from 2005–2019'' (Feb. 15. 2024), available at *https://aspe.hhs.gov/sites/default/files/documents/ea6442054785081eb121fa5137cf837d/aspe-brief-refugee-fiscal-impact-study.pdf.*

the final rule becomes effective and who may apply for asylum, or those who are lawfully admitted or paroled into the United States and subsequently apply for asylum, and the employers, states, and local communities who are impacted by these populations.

Further, many of the goals of this rule actually support the interests of those same asylum applicants, employers, and state and local communities. For example, the changes proposed in the rule would help deter frivolous, fraudulent, and otherwise meritless asylum filings, which would permit DHS to more efficiently adjudicate the applications for aliens with meritorious asylum claims. Employers who rely on employment-authorized aliens for a labor pool are unlikely to prefer aliens with criminal arrests and convictions, aliens who pose national security threats, or aliens who committed fraud during the immigration process. Similarly, while state and local communities have an economic interest in newly arrived aliens sustaining themselves and contributing to the economy, they also have an interest in protecting their communities from national security threats, aggravated felons, and other criminal and fraud risks.

It is the policy of the Executive Branch to protect the national sovereignty of the United States by facilitating the admission of aliens whose presence serves the national interest and preventing the admission of those who do not, as well as to protect national security and public safety. 90 FR 8327 (Jan. 29, 2025); 90 FR 8333 (Jan. 29, 2025). Aliens admitted into the United States may choose to file for a variety of immigration benefits or protections, one of which is asylum. This rulemaking is part of a series of reforms DHS is undertaking to improve the integrity of the asylum system, including streamlining efforts, so that those with meritorious asylum claims are adjudicated quickly and aliens who are ineligible are promptly denied.

B. Efforts To Reform the Asylum System

The Refugee Act of 1980, Public Law 96–212, 94 Stat. 102, was the first comprehensive legislation to establish the modern refugee and asylum system.[25] Signed into law in March 1980, the legislation was intended to ''provide a permanent and systematic procedure for admission to this country of refugees of special humanitarian concern to the United States'' and to provide provisions for effective resettlement of such refugees.[26] The Refugee Act also, for the first time, created a statutory basis for asylum, in order to help ensure that U.S. statutory law conformed to Article 33 of the 1951 U.N Convention relating to the Status of Refugees.[27] The law directed the Attorney General to establish a procedure for the granting of asylum status to aliens physically present in the United States, or at a land border or port of entry, if the Attorney General determines the alien meets the definition of a refugee.[28]

In June 1980, legacy Immigration and Naturalization Service (INS) issued an interim regulation implementing provisions of the Refugee Act.[29] Among other things, the regulation permitted district directors, in their discretion, to grant requests for employment authorization made by aliens who had filed non-frivolous asylum applications.[30] DHS notes the significance of even that interim regulation requiring that asylum applications be non-frivolous. The regulation did not, however, build in a waiting period, meaning aliens were eligible to request and receive employment authorization upon filing their asylum applications.[31] Further, the regulation did not specify any other restrictions related to employment authorization, such as the duration of employment authorization or grounds of ineligibility.[32]

While the 1980 regulation fulfilled the Refugee Act's rulemaking mandate, it was a temporary regulatory mechanism and merely functioned to bridge the new statute with the system that was already in place while the U.S. government took up a period of deliberate study and analysis to design permanent procedures. 55 FR 30674, 30675 (July 27, 1990). In 1987, the INS published a more fulsome proposed regulation to reform asylum adjudications. 52 FR 32552 (Aug. 28, 1987). In 1988, the INS published a revised proposed rule in response to comments on the 1987 proposed rule, and in 1990, it promulgated the final regulation. 48 FR 5885 (Apr. 8, 1988); 55 FR 30674 (July 27, 1990). The final system included, among other changes, the creation of a new corps of asylum officers who would adjudicate asylum claims, moving away from district directors. 55 FR 30676. The final rule also changed the process for obtaining employment authorization, removing it from district director discretion and instead mandating employment authorization for asylum applicants who were not detained and whose applications an asylum officer determined were not frivolous. *Id.* at 30676–77. The validity period was set to 1 year, with renewable increments of up to 1 year. *Id.* The regulation also included automatic termination of employment authorization upon expiration of the EAD or 60 days after denial of asylum, whichever was longer. *Id.; see also id.* at 30682.

The INS's new regulatory scheme for asylum cases proved to be flawed and inadequately resourced, and as a result, asylum processing quickly became overwhelmed. By 1992, the INS received 103,964 asylum applications but adjudicated only 21,996, a mere 21 percent of received asylum applications.[33] Since employment authorization was tethered to the filing of a nonfrivolous asylum application, at this time asylum applicants were typically employment authorized immediately.[34] This created a processing issue that fueled itself: as asylum adjudication times increased, more aliens received employment authorization without having to appear before an INS officer to establish identity or justify their asylum claims, then more aliens began to use asylum applications as a mechanism for prompt employment authorization which further increased filings and asylum application processing times.[35] In

[25] The Refugee Act of 1980 codified the definition of a refugee from the 1967 United Nations Protocol Relating to the Status of Refugees. United Nations, ''Protocol Relating to the Status of Refugees'' (Jan. 31, 1967), 19 U.S.T. 6223, TIAS No. 6577, 606 U.N.T.S. 267.

[26] Refugee Act of 1980, Public Law 96–212, sec. 101(b), 94 Stat. 102, 102 (Mar. 17, 1980).

[27] H.R. Rep. No. 96–608 (1979).

[28] Refugee Act of 1980, sec. 201(b), 94 Stat. at 105 (adding section 208 of the INA, 8 U.S.C. 1158); *see also id.* at sec. 201(a), 94 Stat. at 102 (codifying the following definition of ''refugee'': ''The term 'refugee' means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. . . .'').

[29] Aliens and Nationality; Refugee and Asylum Procedures, 45 FR 37392 (June 2, 1980). This interim rule was not finalized until 1983. Aliens and Nationality; Asylum Procedures, 48 FR 5885 (Feb. 9, 1983).

[30] 45 FR 37394.

[31] *Id.*

[32] *Id.*

[33] INS, DOJ, ''1994 Statistical Yearbook of the Immigration and Naturalization Service'' (Feb. 1996), p. 83.

[34] FR 30681–82. Additionally, the direct filing of asylum applications in the asylum office with jurisdiction over the applicant's residence did not change until 1994. *See* 59 FR 14779, 14782.

[35] *See, e.g.,* David A. Martin, ''Making Asylum Policy: The 1994 Reforms'' 70 Wash. L. Rev. 725, 734–37 (July 1995).

addition to breeding asylum abuse and program integrity concerns, this situation adversely impacted aliens with meritorious asylum claims by increasing the backlog and decision wait times and leading to a rise in unscrupulous immigration ''consultants'' who preyed on aliens with meritorious asylum claims, convincing them to file boilerplate asylum claims even when the aliens had their own valid claims.[36]

Faced with these difficulties and mounting pressures from internal and external stakeholders, the INS published a proposed reform in March 1994 and final regulations in December 1994. 59 FR 14779 (Mar. 30, 1994); 59 FR 62284 (Dec. 5, 1994). INS's 1994 proposed rule could easily describe the current state of DHS's asylum backlog, albeit with an even larger backlog and longer wait times for adjudications:

The existing system for adjudicating asylum claims cannot keep pace with incoming applications and does not permit the expeditious removal from the United States of those persons who [sic] claims fail. While part of this difficulty is attributable to limited resources, the problem also stems in large part from the effort to meet procedural requirements imposed by current regulations. On October 1, 1990, the INS had a backlog of approximately 90,000 asylum claims. Since that date, approximately 250,000 cases have been added to that backlog. Asylum applications are received at a current rate approaching 150,000 per year. A significant and growing percentage of current receipts are claims that appear on their face to be nonmeritorious or abusive. . . . Indeed, most asylum applicants wait a year or more to receive even initial decision on their cases.[37]

As such, INS proposed several changes to the rules governing asylum applications and associated EADs. Most relevant to what DHS endeavors to do today were the provisions designed to decrease frivolous filings, specifically the creation of the rule that asylum applicants could not apply for employment authorization until 150 days had elapsed after their initial filing of a complete asylum application.[38] According to the proposal, the INS then had 30 additional days to adjudicate the employment authorization application.[39] This 180-day period is colloquially known as the ''180-day Asylum EAD Clock.'' [40] The INS proposed rule explained that the proposed 150-day wait for filing an EAD application was important to encourage INS to adjudicate claims promptly within the 150-day period to avoid having to separately adjudicate the work authorization applications; and that it would authorize INS to deny employment authorization to those whose underlying asylum applications have been denied. The proposed rule noted that this reform should reduce the number of asylum applications filed primarily to obtain employment authorization. It also explained that applicants with pending asylum claims would wait longer, but those whose claims are not adjudicated within the 150-day period would, subject to certain conditions, would be eligible to apply for and receive work authorization; and that INS would adjudicate those applications within 30 days, regardless of the merits of the underlying asylum claim.[41]

The INS received 345 public comments in response to the proposed rule and, in December 1994, published a final rule. 59 FR 62284, 62285 (Dec. 5, 1994).[42] While the INS changed several parts of the proposed rule in response to public comments, the provisions governing the 150-day waiting period to apply for employment authorization and the 30-day processing timeframe for adjudicating employment authorizations for pending asylum applicants were both retained. 59 FR 62290–62291. The INS discussed several public comments submitted that were not supportive of the proposed 150-day waiting period and 30-day processing timeframe changes, which included concerns that:

- Asylum applicants would be forced to work illegally in jobs where they would be underpaid and treated poorly but would have no means of redress because of the fear of reprisals.
- Advocated for eliminating the waiting period and maintaining the current rule, which allowed immediate applications for employment authorization and issuance within 90 days.
- Advised providing exceptions to the waiting period by granting employment authorization immediately or within 90 days to applicants who demonstrate hardship or economic need (such as those with no relatives in the United States or who have small children).

59 FR 62290. The INS responded to explain the belief that the asylum process should be separated from the employment authorization process and that the rule would discourage applicants from filing meritless asylum applications solely to obtain employment authorization. The INS further explained that it expected all applicants to have work authorization after 180 days unless their claims had been denied.

INS stated that it had considered in particular recommendations that it establish alternate means for adjudicating employment authorization based on the merits of the asylum application or on economic need. INS noted that either alternative would invite a large number of applications, thus diverting resources and undermining the goal of asylum reform. The Department noted that it did not believe loosening eligibility standards for employment authorization was the appropriate path in light of the large number of applicants who applied for asylum primarily as a means to gain work authorization, and that it believed the rule would instead provide the best way to discourage applications filed for this reason and enable it to grant asylum, and work authorization, to applicants meriting such relief. 59 FR 62290–91.

Clearly, the intent was that this would decouple asylum applications from employment authorization in order to disincentivize frivolous filings and allow the system to function properly. Further, DHS notes that the INS affirmatively decided to delay all aliens with pending asylum applications (both meritorious and meritless filings) the opportunity to apply for employment authorization expressly because the INS believed this measure would help combat frivolous, fraudulent, or otherwise meritless asylum applications filed primarily to obtain employment authorization and regain control over the backlog and processing times.

In 1996, shortly after the regulatory asylum reform, Congress passed comprehensive immigration enforcement legislation, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), which, among other things, included provisions

[36] *Id.*

[37] *See* 59 FR 14780.

[38] *Id.*

[39] *Id.*

[40] USCIS, ''The 180-Day Asylum EAD Clock Notice,'' *https://www.uscis.gov/sites/default/files/document/notices/Applicant-Caused-Delays-in-Adjudications-of-Asylum-Applications-and-Impact-on-Employment-Authorization.pdf* (last updated Mar. 2025).

[41] *See* 59 FR 14779, 14780.

[42] Not all public comments related to the 150-day waiting period and the 30-day processing timeframe. Many of the public comments related to the other proposed changes, including the proposed filing fee for asylum applications and associated employment authorization applications, the form of the asylum application, how incomplete applications would be processed, renewal of employment authorization, interviews and other procedures, and how failures to appear by the alien would be processed. *See generally* 59 FR 62284.

on asylum adjudications.[43] IIRIRA states that any procedures established under section 208(d)(1) of the INA; 8 U.S.C. 1158(d)(1), ''shall'' provide that, in the absence of exceptional circumstances, final administrative adjudications of asylum applications ''shall'' be completed within 180 days after the date applications are filed.[44] Mirroring the 1994 regulatory reforms, IIRIRA also restricted the Secretary from granting employment authorization to asylum applicants until 180 days after the filing of the application for asylum.[45]

The regulatory reforms, either alone or in tandem with the statutory change, succeeded in curtailing meritless claims and delivering fair and timely decisions on asylum cases. New asylum filings actually decreased from their peak of 149,566 in FY 1995 to just 30,261 in FY 1999, a decrease of nearly 80 percent in only five FYs.[46] At the same time, the approval rate significantly increased, from 15 percent of cases adjudicated in FY 1993 to 38 percent in FY 1999.[47] In February 2000, the INS issued a News Release celebrating the 1994 Asylum Reforms (which became effective in January 1995), including the following statement by INS Commissioner Doris Meissner, ''Five years ago, INS launched badly needed reform of an asylum system that was overwhelmed, unresponsive and vulnerable to misuse.'' [48] The news release continued:

By 1992, almost two-thirds of all claims became part of a burgeoning backlog due to a lack of resources and effective procedures for processing those claims. By 1993, the asylum system was in a crisis, having become a magnet for abuse by persons filing applications in order to obtain employment authorization.[49]

INS statistics showed a ''decrease of 75 percent in the number of new claims being filed with INS, from 127,129 in FY 1993 to 30,261 in FY 1999'' while ''the approval rate of cases heard by INS asylum officers has increased from 15 percent of cases adjudicated in FY 1993 to an approval rate of 38 percent in FY 1999, another indicator that INS is receiving more valid claims.'' [50] These statistics show that the 1994 rulemakings had an unmistakable impact on asylum program integrity.[51] With overall asylum filings decreasing and the approval rate increasing, the clear implication was that ineligible aliens (regardless of the basis for ineligibility or whether the filing was frivolous, fraudulent, or otherwise meritless) stopped filing and, as a result, clogged the asylum system. DHS seeks a similar result with this proposed regulatory action.

C. Continued Need for Reform

Since IIRIRA, there have been no major statutory changes to the asylum provisions to address the immigration realities faced by the United States today. While little has changed with respect to asylum-specific statutory and regulatory authorities for EADs for asylum applicants since the 1994 regulatory reforms, there have been significant operational changes and numerous challenges for these cases, including what steps constitute a part of the adjudication and the length of time to adjudicate the applications.[52]

Application Support Centers

One such operational challenge arose after the 1994 regulatory reforms, related to biometrics. In 1994 the INS was still using FD–258 fingerprint cards for the submission of biometrics for immigration benefit requests. The INS accepted those FD–258 fingerprint cards directly from applicants and petitioners through the mail. In 1997, when funding the agency for 1998, Congress prohibited the INS from accepting any fingerprint cards collected by entities outside the INS for immigration benefits, except in certain instances when collected by law enforcement agencies and in certain overseas situations.[53] Previously, certain ''designated fingerprint services'' entities could collect fingerprints and submit them to INS. This FD–258 process was fraught with both errors and fraud.[54] To comply with the law, INS established the Application Support Centers (ASCs), which continue to exist nationwide today and which DHS operates for the collection of biometrics for immigration benefits. *See* 63 FR 12979 (Mar. 17, 1998).

This new process was something of a double-edged sword. There were notable advantages, including improved program integrity, capability for identity verification, and a more automated conduit for criminal history background checks. However, one time-intensive consequence was that the new process required INS (and later USCIS) to affirmatively schedule an alien's ASC appointment for biometrics collection after receipt of a benefit request.[55] At the time, the affirmative scheduling of an ASC appointment after receipt of a benefit request added anywhere from several weeks to over a month to the front-end processing times for immigration benefit requests with an associated biometrics collection. This continues to be true, as most aliens today are scheduled for ASC

[43] Public Law 104–208, div. C, 110 Stat. 3009, 3009–546.

[44] *Id.* sec. 604, 110 Stat. at 3009–694 (codified at INA sec. 208(d)(5)(A)(iii), 8 U.S.C. 1158(d)(5)(A)(iii)).

[45] *Id.* sec. 604, 110 Stat. at 3009–693 (codified at INA sec. 208(d)(2), 8 U.S.C. 1158(d)(2)).

[46] Ruth Ellen Wasem, Congressional Research Service, ''Asylum and 'Credible Fear' Issues in U.S. Immigration Policy'' (June 29, 2011), *https://www.congress.gov/crs-product/R41753;* INS, DOJ ''Asylum Reform: Five Years Later'' (Feb. 1, 2000), *https://www.uscis.gov/sites/default/files/document/news/Asylum.pdf.*

[47] INS, DOJ ''1999 Statistical Yearbook of the Immigration and Naturalization Service'' (Mar. 2002), p. 100. Percent approved is '[t]he number of cases granted divided by the sum of: cases granted; denied; and referred to an Immigration Judge following an interview.''

[48] INS, DOJ, ''Asylum Reform: Five Years Later'' (Feb. 1, 2000), *https://www.uscis.gov/sites/default/files/document/news/Asylum.pdf.*

[49] *Id.*

[50] *Id.; see also* INS, DOJ ''1999 Statistical Yearbook of the Immigration and Naturalization Service'', p. 100 (Mar. 2002) (Percent approved is '[t]he number of cases granted divided by the sum of: cases granted; denied; and referred to an Immigration Judge following an interview.'').

[51] *Id.; see also* INS, DOJ, ''Asylum Reform: Five Years Later'' (Feb. 1, 2000), *https://www.uscis.gov/sites/default/files/document/news/Asylum.pdf.*

[52] *See* 59 FR 62284, 62289 (Dec. 5, 1994). 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. 365 F. Supp. 3d 1156 (W.D. Wash. 2018).

[53] *See* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1998, Title I, Public Law 105–119, 111 Stat. 2440, 2447–48 (1997).

[54] *See* Office of the Inspector General, DHS, OIG–16–130 ''Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records'' (Sept. 8, 2016), *https://www.oig.dhs.gov/reports/2016-09/potentially-ineligible-individuals-have-been-granted-uscitizenship-because.*

[55] In essence, INS or USCIS would receive a benefit request and an employee would determine whether the filing was subject to a biometrics requirement. The employee would then determine the nearest ASC to the alien, according to the address provided on the request. The employee would have to then determine the next available appointment date and time for a biometrics collection at that particular ASC. Finally, the employee would have to create a paper appointment notice for the alien and mail it to the address provided on the request. In order to give the alien a reasonable amount of notice, and account for postal service delivery of the written appointment notice, appointments were typically scheduled approximately 30 days from the date of the appointment notice. While much of this process was automated in recent years by USCIS, there is still the need to afford the alien adequate notice of the appointment and not overbook appointments at a particular ASC. Consequently, while there is variance in backlogs and throughputs from ASC to ASC, today USCIS still estimates the wait for an ASC appointment to be several weeks. Additionally, if the scheduled appointment is not convenient, the alien can use an online tool to reschedule an existing appointment, but that does not help schedule initial appointments faster. *See generally* USCIS, ''Preparing for Your Biometric Services Appointment'' (last updated July 6, 2023), *https://www.uscis.gov/forms/filing-guidance/preparing-for-your-biometric-services-appointment.*

appointments approximately three to four weeks after receipt of a benefit request.

Aggravated Felony Conviction Bar for EADs

With respect to employment authorization for pending asylum applicants, the creation of ASCs and the requirement for biometrics collection at certain facilities, operated by INS and later DHS, brought to bear another problem. In the previously mentioned 1994 final rule, INS amended the regulations to bar aliens convicted of an aggravated felony from submitting an application for employment authorization based on the pending asylum application. *See* 59 FR at 62299. Although there is no discussion on specific comments directly on this point in the final rule, the INS did not amend the final rule to remove the proposed bar for aliens convicted of an aggravated felony. 59 FR at 62291.

Prior to the 1994 rulemakings, having an aggravated felony conviction was not grounds for denying an employment authorization application,[56] and prior to the creation of ASCs in 1998, the agency accepted fingerprints on cards that were submitted with the benefit request being filed. Once INS began requiring an alien to appear at an ASC for biometric collection, it made compliance with both the aggravated felony conviction ineligibility ground and the 30-day asylum EAD processing timeframe extremely difficult. The most reliable way for USCIS to identify criminality (*e.g.,* aggravated felonies) is with a Federal Bureau of Investigation (FBI) Identity History Summary (IdHS, formerly known as a ''RAP sheet''), which locates criminal records based on the alien's fingerprints.[57] In order to obtain an alien's RAP sheet from the FBI, INS needed to send the alien to the ASC—which took several weeks. All the while, the 30-day asylum EAD processing timeframe was running. *See* current 8 CFR 208.7(a)(1). Due to the expanded logistics and process for obtaining RAP sheets, officers could not comply with both provisions of 8 CFR 208.7(a)(1), which simultaneously prohibited approval of an EAD to an aggravated felon and required that the application be adjudicated within 30 days of filing. *See* current 8 CFR 208.7(a)(1). This left INS, and, in turn, USCIS, in an extremely difficult dilemma, as waiting on the results of biometrics in order to identify an aggravated felony conviction for potential ineligibility grounds meant that USCIS would violate the 30-day asylum EAD processing timeframe. DHS recognizes that requiring biometrics collection now and analyzing a variety of criminal issues may again increase employment authorization application processing times, but DHS firmly believes the increased benefits to national security and public safety outweigh this potential delay in adjudications.

Policy Memorandum 110 and USCIS–ICE Memorandum of Agreement.

Adding another layer of complexity to employment authorization processing for pending asylum applicants, on July 11, 2006, USCIS issued Policy Memorandum 110 (''PM 110'') entitled Disposition of Cases Involving Removable Aliens, which mandated that officers refer egregious public safety cases to USCIS' Fraud Detection and National Security (FDNS) and suspend adjudication of such cases for 60 days or until Immigration and Customs Enforcement (ICE) provides notification of its action on the cases, which ever date was earlier.[58] Imbedded within PM 110 was a copy of a Memorandum of Agreement (MOA) with ICE, dated June 20, 2006, negotiated and signed by both agencies.[59] The MOA detailed specific processes at both agencies for handling cases referred to ICE by USCIS, including USCIS 60-day adjudicative hold, ICE response time requirements, and specific guidance for cases where ICE failed to provide any response within the 60-day timeline. The purpose of the 60-day hold was to provide ICE with an appropriate amount of time to adequately screen, vet, and investigate aliens and determine what, if any, enforcement action was appropriate.[60] However, the hold also created a significant impediment to compliance with existing regulations governing the timeline for adjudicating employment authorization for pending asylum applicants. Consequently, this meant that even where USCIS could schedule a biometrics collection and obtain a RAP sheet within 30 days, if the RAP sheet (or any other source of derogatory information) indicated the existence of a public safety concern—even one that did not rise to the level of aggravated felony—an additional 60-day hold would be required. Furthermore, in some cases, scheduling such an alien for an ASC appointment could use the entire 30-day (c)(8) EAD processing timeframe and that was prior to referring the case to FDNS or ICE.

On May 11, 2007, USCIS issued the Interoffice Memorandum *Processing of Applications for Ancillary Benefits Involving Aliens Who Pose National Security or Egregious Public Safety Concerns,*[61] which clarified PM 110 as it related to primary and ancillary benefit requests. The Interoffice Memorandum expressly stated, ''The adjudication of ancillary applications and petitions shall be suspended for 60 days or until ICE provides notification of its intended action(s) on the primary applicant, whichever is earlier.'' In fact, the Interoffice Memorandum added another population of cases to the mix as well, by requiring that any application for an ancillary benefit filed by an alien who poses a national security concern would now be processed in a similar manner as an egregious public safety case.[62] As such, for any employment authorization application filed by a pending asylum applicant with potential national security or public safety derogatory information, officers could not comply with both the 30-day EAD processing timeframe and USCIS policy with respect to ICE referrals. This created another extremely difficult situation even in cases where USCIS already had a RAP sheet: screening and vetting in cases with national security or public safety concerns meant that USCIS would violate the asylum 30-day EAD processing timeframe. As USCIS receipts have increased, so has the need to thoroughly screen and vet cases, especially where there may be security concerns, and while the agency continues to meet its national security responsibilities, the 30-day EAD processing timeframe also continues to make this effort challenging.

Rosario v. USCIS.

Another ensuing challenge encountered for asylum related

[56] As explained above, the June 1980 INS interim regulation implementing provisions of the Refugee Act had no waiting period or ineligibilities. 45 FR 37392; *see also* 48 FR 5885 (Feb. 9, 1983) (finalizing this interim rule).

[57] *See* Criminal Justice Information Services Division (CJIS), Federal Bureau of Investigation (FBI), ''Next Generation Identification (NGI),'' *https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/*ngi (last visited May 23, 2025).

[58] USCIS Policy Memorandum No. 110, ''Disposition of Cases Involving Removable Aliens'' (Jul. 11, 2006).

[59] *Id.*

[60] USCIS, PM 110 (''USCIS will interrupt adjudication and FDNS will refer the case to ICE so that ICE has an opportunity to decide it, when and how it will issue an NTA and/or detain the alien.''); *see also* Memorandum of Agreement Between United States Citizenship and Immigration Services and United States Immigration and Customs Enforcement on the Issuance of Notices to Appear to Aliens Encountered During an Adjudication (June 20, 2006).

[61] Memorandum from Michael Aytes, Associate Director, District Operations, HQOFO 70/1–P (May 11, 2007) *https://www.uscis.gov/sites/default/files/document/memos/AncillaryEPSNS051107.pdf.*

[62] *Id.*

employment authorization applications was the *Rosario* litigation. On May 22, 2015, *Rosario* v. *USCIS* was filed in the U.S. District Court for the Western District of Washington under case no. 2:15–cv–00813 challenging the delays in processing initial EADs for asylum applicants.[63] On July 26, 2018, in a published order, the District Court found that USCIS data revealed that ''from 2010 to 2017, USCIS met its 30-day deadline in only 22% of cases—that is, out of 698,096 total applications, USCIS resolved only 154,629 applications on time. In 2017, USCIS timely resolved only 28% of applications.'' [64]

However, the District Court recognized USCIS made some changes in response to the need to more quickly adjudicate the (c)(8) EAD applications. First, the court recognized that two years earlier, USCIS had increased the validity period of an initial asylum EAD from one year to two years.[65] Second, the court recognized that the previous year USCIS provided checklists on its websites to assist asylum applicants seeking to submit (c)(8) EAD applications.[66] The court found one of the ''chief purposes'' of the 30-day asylum EAD processing timeframe, as part of the larger INS regulatory amendments, was ''to ensure that bona fide asylees are eligible to obtain employment authorization as quickly as possible.'' [67] The court noted that the focus on expediency is reinforced by how the agency described the INS's 1994 proposed rule: ''The INS will adjudicate these applications for work authorization within 30 days of receipt, regardless of the merits of the underlying asylum claim.'' [68] Ultimately, the court granted the plaintiffs' motion for summary judgment, denied USCIS' motion for summary judgment, found that USCIS was in violation of 8 CFR 208.7(a)(1), enjoined USCIS from further failing to adhere to the 30-day asylum EAD processing timeframe as set forth in 8 CFR 208.7(a)(1), and ordered USCIS to submit status reports every six months regarding the rate of compliance with the 30-day EAD processing timeframe.[69] USCIS still submits status reports in compliance with the court order as of the publication of this NPRM.[70]

Subsequent Regulatory Efforts and Litigation.

More recently, there have been multiple efforts to reform the existing system, with the intent of relieving the agency of the burden of adjudicating (c)(8) EADs within 30 days and diminishing the incentive to file frivolous, fraudulent, or otherwise meritless affirmative asylum applications. In recent years, DHS published two regulations aimed at reforming the existing system and accomplishing those goals. In 2020, DHS published the Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I–765 Employment Authorization Applications (''Timeline Repeal Rule'') Final Rule, which removed the regulatory provision stating that USCIS has 30 days from the date an alien with a pending asylum application files the initial application for employment authorization to grant or deny that application. 85 FR 37502 (June 22, 2020). The rule also removed the provision requiring that an application for renewal of a (c)(8) EAD must be received by USCIS 90 days prior to the expiration of the employment authorization. *Id.* In 2020, DHS also published the Asylum Application, Interview, and Employment Authorization for Applicants (''Broader Asylum EAD Rule'') Final Rule, which modified regulations governing asylum applications, interviews, and eligibility for employment authorization based on a pending asylum application. FR 38532 (June 26, 2020). Major provisions of that rule included removing the ''deemed complete'' provision related to asylum application filings, increasing the waiting period before asylum applicants were eligible to file for and receive an EAD, and imposing other eligibility requirements. *Id.* In January 2018, prior to the promulgation of these rules, the affirmative asylum backlog stood at approximately 311,000 pending cases.[71] By the end of FY 2022, the backlog had nearly doubled to approximately 625,000 affirmative asylum applications, and by the end of FY 2023, had tripled to more than 1 million pending affirmative asylum cases.[72] This drastic increase in the affirmative asylum backlog highlights the dire situation USCIS finds itself in and the urgent need for reform of the existing regulations and process.

Litigation followed the publication of these two rules (''2020 Asylum EAD Rules''), including *CASA* [73] in the U.S. District Court for the District of Maryland, and *Asylumworks* [74] 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 (ASAP) organizations.[75] The *CASA* preliminary injunction applying only to members of the CASA and ASAP created a bifurcated and operationally challenging application of the 2020 asylum rules in that the rules were enjoined from applying to organizational members while continuing to apply to non-member applicants. The *CASA* court made a finding that was significant to this proposed rulemaking, when the court determined the elimination of the 30-day Asylum EAD clock (''Timeline Repeal Rule'') was arbitrary and capricious for two different reasons. Specifically, the court found, first, that USCIS' rationale for elimination of the 30-day processing timeframe belied the evidence in the record and, second, that USCIS' responses to public comments were conclusory and reflected that the agency did not consider important policy alternatives (*e.g.,* imposing a longer processing timeframe).[76] Specifically, the court found, ''But rather than giving adequate consideration to this important alternative, the agency provided a half-baked and internally contradictory explanation for rejecting it. Its rationale does not pass muster.'' [77] Relying on *Rosario,* the court noted ''While the agency's difficulty in complying with the 30-day deadline supports extending the timeline, it hardly explains why there should be no timeline at all.'' [78] In this proposed rule, DHS seeks to

[63] 365 F. Supp. 3d 1156 (W.D. Wash. 2018).

[64] *Rosario,* 365 F.Supp.3d at 1158.

[65] *See* USCIS, ''USCIS Increases Validity of Work Permits to Two Years for Asylum Applicants, U.S. Citizenship and Immigration Services'' (Oct. 6, 2016), *https://www.uscis.gov/archive/uscis-increases-validity-of-work-permits-to-two-years-for-asylum-applicants.*

[66] *See* Form M–1162, ''Optional Checklist for Form I–765(c)(8) Filings,'' Asylum Applications (With a Pending Asylum Application) Who Filed for Asylum on or after January 4, 1995, (July 17, 2017), *https://www.uscis.gov/archive/optional-checklist-for-form-i-765-c8-filings.*

[67] *See Rosario,* 365 F.Supp.3d at 1160 (citing to 62 FR at 10318).

[68] *See Rosario,* 365 F.Supp.3d at 1160 (citing to 50 FR at 14780).

[69] *See Rosario,* 365 F.Supp.3d at 1163.

[70] *See generally,* USCIS, ''Rosario Class Action,'' *https://www.uscis.gov/laws-and-policy/other-resources/class-action-settlement-notices-and-agreements/rosario-class-action* (last updated Sept. 19, 2022).

[71] 71 OIG, USCIS Faces Challenges Meeting Statutory Timelines and Reducing Its Backlog of Affirmative Asylum Cases (July 3, 2024), available at: *https://www.oig.dhs.gov/sites/default/files/assets/2024-07/OIG-24-36-Jul24.pdf.*

[72] *Id.*

[73] *See CASA de Maryland, Inc.* v. *Wolf,* 486 F. Supp. 3d 928 (D. Md. 2020).

[74] *Asylumworks* v. *Mayorkas,* 590 F. Supp. 3d 11 (D.D.C. Feb. 7, 2022).

[75] *CASA,* 486 F. Supp. 3d at 973–74.

[76] *See id.* at 961–63.

[77] *Id.* at 963.

[78] *Id.*

extend—rather than eliminate—the 30-day EAD processing timeline.

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.[79] On September 22, 2022, DHS published a final rule titled ''Asylum Application, and Employment Authorization for Applicants; Implementation of Vacatur'' (87 FR 57795 (Sept. 22, 2022)) that implemented the court order in *Asylumworks* by removing the changes made by the 2020 Asylum EAD Rules and restored the regulatory text that predated the 2020 Asylum EAD Rules.

As a result of the *Asylumworks* court order, since February 7, 2022, USCIS has been required to process all initial (c)(8) EAD applications within 30 days of filing. While the court ordered a return to a regulatory requirement that had existed until 2020, the burden created by the order was significant and continues to impact overall EAD processing due to the surge in (c)(8) EAD applications. Following the *Asylumworks* vacatur, at the end of February 2022, there were 93,639 pending EAD applications to which the 30-day processing timeframe requirement applied, including those aliens who were CASA or ASAP members who already benefited from the 30-day processing timeframe and those who were not previously subject to the *CASA* injunction and for whom USCIS was not subject to a processing timeframe prior to the vacatur.[80] To address the backlog of cases and comply with the court's order, USCIS surged resources for the entire initial (c)(8) workload, including adding staff (pulling from other EAD workloads as well as new hires) and authorizing overtime.

Changing EAD Validity Periods

Additionally, USCIS utilized a different method to help manage the (c)(8) EAD operational workload. In an effort to control the (c)(8) processing times, on several occasions USCIS has extended the validity periods of (c)(8) EADs.

First, in 2016, USCIS increased the validity period of an initial and renewal asylum EADs from one year to two years.[81] This fact was recognized by the *Rosario* Court in its grant of summary judgment.[82] As data referenced in other parts of this proposed rulemaking illustrate, this did not help with receipts or processing times. So, on September 27, 2023, USCIS extended the validity period for (c)(8) EADs (both initials and renewals) again, this time from two years to five years. The stated justification was, ''[t]he increase in the EAD validity period will reduce the frequency with which affected noncitizens must file an Application for Employment Authorization (Form I–765) with USCIS if they wish to renew their EAD.'' [83] The purpose of this policy change was to alleviate some operational pressure to adjudicate renewals prior to expiration solely based on USCIS processing times with an overall benefit of supporting all timely adjudications of employment authorization, including initial applications for (c)(8) EADs.

To date, the agency is still ascertaining the effectiveness of the validity period extension. What is clear is that with some fluctuations, monthly asylum application filings rose from 36,728 in October 2023 to 53,182 in January 2025, before falling to 40,344 in April 2025.[84] Initial applications for (c)(8) EAD filings increased almost every single month from 90,307 in October 2023 before reaching a high of 152,341 in January 2025.[85] Since that time, initial EAD (c)(8) EAD receipts have somewhat decreased over recent months, but rebounded to 153,888 in July 2025.[86]

On December 4, 2025, USCIS issued policy guidance in the USCIS Policy Manual to update the maximum EAD validity periods for certain EAD categories, including aliens with pending asylum applications. *See* USCIS, Policy Alert, ''Updating Certain Employment Authorization Document Validity Periods'' (Dec. 4, 2025), *https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20251204-EmploymentAuthorizationValidity.pdf.* Effective December 5, 2025, the maximum EAD validity period for aliens with pending asylum applications has been reduced to 18 months. *Id.* This change is intended to ensure more frequent vetting of aliens applying for work authorization in the United States and will better enable USCIS to deter fraud and detect aliens with potentially harmful intent. *Id.*Second, in 2024, DHS published the ''Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants'' Final Rule which increased the automatic extension period for expiring EADs for certain renewal applicants from 180 to 540 days in order to prevent aliens from experiencing lapses in employment authorization due to significant delays in EAD processing times. 89 FR 101208 (Dec. 13, 2024).[87] While this rule extended authorization periods for a range of EAD categories, it applied to (c)(8) applicants, and DHS discussed the surge in (c)(8) applications as part of the support for that rule. *See, e.g., id.* at 101220.[88]

During the (c)(8) EAD validity extension and the automatic extensions, asylum application receipts increased while initial (c)(8) EADs significantly increased. Reasonable minds can disagree on whether it was prudent or appropriate from a program integrity perspective to more than double the validity period of (c)(8) EADs to alleviate some operational pressure on renewal based on USCIS processing times with an overall benefit of supporting all timely adjudications of employment authorization, including initial (c)(8) EAD applications. Nevertheless, it is clear that DHS has attempted multiple solutions and attempted to regain control over the

[79] *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).

[80] See *Asylumworks* v. *Mayorkas* 1:20–cv–03815–BAH (D.D.C. Feb. 7, 2022) memorandum opinion explaining CASA and ASAP members previously were granted a preliminary enjoined enforcement of both 2020 EAD rules; *see also* USCIS Stopped Applying June 2020 Rules Pursuant to Court Order in Asylumworks v. *Mayorkas (Sept. 21, 2022) (noting CASA and ASAP members no longer need to provide evidence of membership with their initial C8 EAD applications), https://www.uscis.gov/archive/uscis-stopped-applying-june-2020-rules-pursuant-to-court-order-in-asylumworks-v-mayorkas.*

[81] *See* USCIS, ''USCIS Increases Validity of Work Permits to Two Years for Asylum Applicants, U.S. Citizenship and Immigration Services'' (Oct. 6, 2016), *https://www.uscis.gov/archive/uscis-increases-validity-of-work-permits-to-two-years-for-asylum-applicants.*

[82] *See Rosario,* 365 F.Supp.3d at 1158.

[83] *Id.*

[84] USCIS National Production Dataset (NPD), May 27, 2025.

[85] *Id;* USCIS OPQ Data, ''*I–765, Application for Employment Authorization, C08 Eligibility Category, Receipts from August 1, 2024–July 31, 2025*'' (Aug. 26, 2025).

[86] *Id.*

[87] *See also* 87 FR 26614 (May 4, 2022) (temporary final rule on this same topic); 89 FR 24628, 24634 (Apr. 8, 2024) (same).

[88] On October 30, 2025, DHS ended the practice of automatically extending the validity period for EADs in certain categories, including aliens with pending asylum applications. 90 FR 48799 (Oct. 30, 2025). DHS explained that this change was designed to ensure complete and thorough vetting of all EAD applicants and that USCIS only issues EADs to aliens who are in fact eligible. 90 FR 48807–08.

(c)(8) filings using regulatory, policy, and operational tools—but all efforts have failed, and receipt volumes keep rising.

Frivolous, Fraudulent, and Meritless Filings

There are numerous and well-documented examples of frivolous, fraudulent, and meritless asylum filings.[89] Some asylum fraud schemes have been perpetrated for the primary purpose of obtaining an asylum EAD.[90] While USCIS uses various methods to identify fraud in specific affirmative asylum applications, a GAO Report concluded that despite its robust methods USCIS actually had limited capability to detect fraud in affirmative asylum applications.[91] The GAO reported that USCIS asylum officers encountered challenges with proving fraud in asylum filings due to the nonadversarial, cooperative approach that asylum officers are trained to take when interviewing asylum applications.[92] According to an Asylum Division Branch Chief cited in the report, while the ''cooperative approach aims to protect genuine asylees, it can also create favorable circumstances for ineligible individuals who seek to file fraudulent claims'' and the GAO reported that asylum officers ''in seven of the eight asylum offices we spoke with told us that they have granted asylum in cases in which they suspected fraud.'' [93]

This is not a new revelation. As the former INS Commissioner noted in 2000 regarding the asylum reforms, ''By 1993, the asylum system was in a crisis, having become a magnet for abuse by persons filing applications in order to obtain employment authorization.'' [94] Even more telling, during the same period, incentives to abuse the asylum system reemerged as well. The number of EADs approved for aliens with asylum applications pending for more than 180-days increased from 55,000 in FY 2016 to 270,000 in FY 2022. This increase in EAD approvals may suggest that meritless asylum applications, filed for the purpose of obtaining work authorization, have increased alongside asylum application processing times.[95]

All told, a myriad of factors contributed to the size and growth of the backlog, which then feeds abuse of the system. There were certainly external factors. Over the past decade, USCIS, along with other DHS components, have been substantially taxed due to a surge of aliens attempting to enter the United States at and between ports of entry and expressing a fear of returning to their home countries, thereby requiring a credible fear or reasonable fear screening. Starting in 2014, USCIS saw a surge in affirmative asylum filings. In 2012, the Asylum Division received approximately 3,000 applications per month.[96] By FY 2014, that number doubled, reaching 6,000 filings per month and steadily grew until the peak in March 2017.[97] A 2020 Citizenship and Immigration Services Ombudsman's Report found ''Total apprehensions of inadmissible aliens at the Southern border, after reaching an all-time high of 1.6 million in FY 2000, rose again from 444,859 in FY 2015 to 977,509 in FY 2019.'' [98]

Additionally, COVID–19 exacerbated existing problems. On March 18, 2020, USCIS suspended routine in-person services to help slow the spread of COVID–19.[99] ''This included USCIS asylum offices and ASCs used for collecting biometrics. On average, USCIS asylum offices conduct between 2,000 to 4,500 interviews a month; these interviews were not taking place during the period the offices remained closed.'' [100]

USCIS policy and processing changes also led to growth in the backlog. INS developed ''Last-in, First-out'' (LIFO) processing in the mid-1990s. The LIFO system is designed to allow employment authorization for asylum seekers while discouraging aliens from potentially filing meritless asylum applications to take advantage of the backlog to obtain employment authorization during the period in which their cases are pending in the backlog. In other words, by giving priority to the newest cases, the intent was that aliens who may have filed asylum applications solely to obtain work authorization would have their cases heard more quickly and denied during the waiting period, meaning that any efforts to file solely to obtain work authorization would be fruitless. LIFO remained in place for years.

Then on December 26, 2014, USCIS began prioritizing working affirmative asylum cases in the order which they were received; this ''First-In, First-Out'' (FIFO) processing was a deviation from past agency practice.[101] As a result of this change the asylum backlog grew more than 1750 percent between 2013

[89] *See generally,* DOJ, Press Release, ''Brooklyn Attorneys Sentenced For Asylum Fraud Scheme'', Press Release, ''SoCal Immigration Consultants Sentenced to Prison in Scheme That Filed Bogus Asylum Applications for Hundreds of Chinese Nationals'' (May 6, 2014), *https://www.ice.gov/news/releases/socal-immigration-consultants-sentenced-prison-scheme-filed-bogus-asylum-applications;* DOJ, Press Release, ''Three Defendants Sentenced in Manhattan Federal Court for Roles in Immigration Asylum Fraud Scheme'' (Mar. 14, 2014), *https://archives.fbi.gov/archives/newyork/press-releases/2014/three-defendants-sentenced-in-manhattan-federal-court-for-roles-in-immigration-asylum-fraud-scheme;* DOJ, Press Release, ''Florida Resident Charged in Scheme to Submit Fraudulent Asylum Applications'' (Jan. 24, 2025), *https://www.justice.gov/usao-ndca/pr/florida-resident-charged-scheme-submit-fraudulent-asylum-applications;* DOJ, Press Release, ''Executives of Immigration Services Company Charged in Scheme to Submit Fraudulent Asylum Applications'' (Oct. 11, 2024), *https://www.justice.gov/usao-ndca/pr/executives-immigration-services-company-charged-scheme-submit-fraudulent-asylum;* DOJ, Press Release, ''Twenty-Six Individuals, Including Six Lawyers, Charged in Manhattan Federal Court with Participating in Immigration Fraud Schemes Involving Hundreds of Fraudulent Asylum Applications'' (Dec. 18, 2012), *https://archives.fbi.gov/archives/newyork/press-releases/2012/twenty-six-individuals-including-six-lawyers-charged-in-manhattan-federal-court-with-participating-in-immigration-fraud-schemes-involving-hundreds-of-fraudulent-asylum-applications;* DOJ, Press Release, ''Middlesex County, New Jersey, Man Admits Attempting to Obtain United States Citizenship by Fraud'' (Apr. 8, 2019), *https://www.justice.gov/usao-nj/pr/middlesex-county-new-jersey-man-admits-attempting-obtain-united-states-citizenship-fraud;* DOJ, Press Release, ''Broward Woman Charged in Scheme to Submit Fraudulent Asylum Applications'' (Mar. 12, 2025), *https://www.justice.gov/usao-sdfl/pr/broward-woman-charged-scheme-submit-fraudulent-asylum-applications.*

[90] *See generally,* USCIS, Press Release, ''Phony Immigration Attorney Who Filed Hundreds of Fraudulent Asylum Applications Sentenced to More Than 20 Years in Federal Prison'' (Apr. 13, 2021), *https://www.uscis.gov/archive/phony-immigration-attorney-who-filed-hundreds-of-fraudulent-asylum-applications-sentenced-to-more;* DOJ, Press Release, ''Thai National Admits to Running Immigration Fraud Scheme'' (Feb. 7, 2017), *https://www.justice.gov/usao-ri/pr/thai-national-admits-running-immigration-fraud-scheme.*

[91] GAO, Report to Congressional Requesters, ''Asylum: Additional Actions Needed to Assess and Address Fraud Risks'' (Dec. 2015), *https://www.gao.gov/assets/gao-16-50.pdf.*

[92] GAO, Report to Congressional Requesters, ''Asylum: Additional Actions Needed to Assess and Address Fraud Risks'' (Dec. 2015), *https://www.gao.gov/assets/gao-16-50.pdf.*

[93] GAO Report, ''Asylum: Additional Actions Needed to Assess and Address Fraud Risks'' (Dec. 2015), *https://www.gao.gov/assets/gao-16-50.pdf.*

[94] DOJ, News Release ''Asylum Reform: Five Years Later'' (Feb. 1, 2000), *https://www.uscis.gov/sites/default/files/document/news/Asylum.pdf.*

[95] Doris Meissner, Faye Hipsman, & T. Alexander Aleinikoff, ''U.S. Asylum System in Crisis: Charting a Way Forward'' Migration Policy Institute, (Sept. 2018).

[96] USCIS, ''Affirmative Asylum Statistics: July, August and September 2014'' (Oct. 28, 2014), *https://www.uscis.gov/sites/default/files/USCIS/Outreach/Upcoming%20National%20Engagements/PED_Affirmative_Asylum_July_August_September_2014.pdf.*

[97] *Id.*

[98] CIS Ombudsman's Report 2020, at 43.

[99] USCIS, ''USCIS Temporarily Closing Offices to the Public March 18–April 1'' (Mar. 17, 2020), *https://www.uscis.gov/archive/uscis-temporarily-closing-offices-to-the-public-march-18-april-1.*

[100] CIS Ombudsman's Report 2020, at 47.

[101] USCIS, Press Release ''USCIS Processing of Asylum Cases'' (Nov. 6, 2020), *https://www.uscis.gov/archive/uscis-processing-of-asylum-cases.*

and 2018.[102] As such, to ''stem the growth of the agency's asylum backlog'' and ''deter those who might try to use the existing backlog as a means to obtain employment authorization,'' in January 2018 USCIS returned to LIFO processing that had been in place for nearly 20 years from 1995 to 2014.[103] USCIS' announcement explained that returning to LIFO would ''allow USCIS to identify frivolous, fraudulent or otherwise non-meritorious asylum claims earlier and place those individuals into immigration proceedings.'' [104] However, the damage was already done. As the former Commissioner of the INS noted, ''Beginning in 2010, and especially since 2014, affirmative applications, credible-fear claims, and backlogs—in both the immigration courts and the Asylum Division—have ballooned.'' [105] In FY2010, USCIS received 28,000 affirmative asylum applications, but by FY2017, USCIS received 143,000 asylum applications (a 402% increase).[106]

FDNS Directorate is responsible for safeguarding the integrity of the nation's lawful immigration system by leading agency efforts to combat fraud, detecting national security and public safety threats, and maximizing law enforcement and Intelligence Community partnerships. FDNS's case management system, FDNS NexGen, tracks certain records actions relevant to USCIS adjudications. Specifically important for this proposed rule, NexGen contains relevant data on pending and adjudicated asylum applications with a ''Fraud Found'' Statement of Findings (SOF). NexGen data reveals that FDNS has identified 8,392 aliens who filed an asylum application and also had a ''Fraud Found'' SOF relating to that alien.[107] Further, NexGen data reveals 1,240 aliens who had attorneys or representatives, filed an asylum application, and also had a ''Fraud Found'' SOF relating to that alien.[108] Of course, this is not an exhaustive list of fraud among all asylum applications, since only cases where fraud is suspected are even referred to FDNS for investigation.

USCIS recognizes that occasionally attorneys and representatives are the source of asylum fraud. Within USCIS' Office of the Chief Counsel is the USCIS Disciplinary Counsel, an office tasked with tracking attorneys and representatives who engage in fraud or other unscrupulous practices. According to USCIS Disciplinary Counsel, there are numerous practitioners and former practitioners who engage in fraudulent practices with asylum cases filed before USCIS.[109] EOIR publishes a list of disciplined practitioners who are not permitted to appear before EOIR or DHS.[110]

In an effort to correlate disciplined or suspended attorneys to frivolous, fraudulent, or meritless asylum filings, FDNS searched asylum applications that were filed by, or associated with, these disciplined or suspended attorneys and representatives. According to USCIS data, the 1,074 (at the time USCIS reviewed) disciplined or suspended attorneys and representatives were associated with 84,586 asylum applications in GLOBAL, USCIS' case management system for asylum.[111] This search was conducted by the attorney or representative's name and, as such, could have yielded a small degree of false positives when the attorney or representative has a common name. At the same time, DHS recognizes that certain unscrupulous attorneys or representatives may continue to file immigration benefit requests for clients after being disciplined or suspended, in such cases the attorney or representative simply does not file a G–28 for the alien. In those cases, the FDNS name search for attorney or representative would have underrepresented the actual number of asylum applications filed by this population of disciplined or suspended attorneys. DHS notes that this is a recognized problem and even the American Immigration Lawyers Association (AILA) has issued guidance to its practitioners regarding ethical concerns to be considered when an attorney decides whether to file an affirmative application for asylum, knowing the alien is not eligible for asylum, and the attorney is acting solely for the purpose of having the alien deliberately placed in removal proceedings.[112] The AILA guidance notes that, depending on the facts of a particular case, an attorney's conduct could be considered frivolous under the

[102] *Id.*

[103] USCIS, Press Release, ''USCIS to Take Action to Address Asylum Backlog'' (Jan. 31, 2018); *https://www.uscis.gov/news/news-releases/uscis-take-action-address-asylum-backlog.*

[104] *Id.*

[105] Doris Meissner, Faye Hipsman, & T. Alexander Aleinikoff, ''U.S. Asylum System in Crisis: Charting a Way Forward'' Migration Policy Institute, (Sept. 2018).

[106] *Id.*

[107] It must be noted that not all of these Fraud Found SOFs related to the asylum application, however this is to be expected. Sometimes fraud and other irregularities are not discovered until after an immigration benefit is approved and this is not exclusive to asylum. For example, INA 318 establishes as a requirement for naturalization that an alien was lawfully admitted as a permanent resident, which is a specific requirement for naturalization that every alien should have already complied with when they obtained their permanent resident status. In the context of this data, asylum fraud may not be discovered until an alien filed for adjustment of status or naturalization—which is why the ''Fraud Found'' SOF may relate to another application filed by the same alien who submitted the application for asylum.

[108] FDNS analysis of NexGen data, May 22, 2025.

[109] *See generally,* Advance Local Media, ''Disbarred attorney on trial for taking money from Hispanic clients found guilty'' (Apr. 11, 2017), *https://www.al.com/news/birmingham/2017/04/disbarred_attorney_who_took_mo.html;* Office of the Massachusetts Attorney General, ''Immigration Attorney Barred From Running Asylum Scam, Ordered to Pay More Than $240,000 Following AG Lawsuit'' (Mar. 24, 2022), *https://www.mass.gov/news/immigration-attorney-barred-from-running-asylum-scam-ordered-to-pay-more-than-240000-following-ag-lawsuit;* Commonwealth of Massachusetts Board of Bar Overseers of the Supreme Judicial Court, ''In re: Matter of George Maroun, Jr., BBO No. 674213'' (Oct. 21, 2024), *https://bbopublic.massbbo.org/web/f/HRPT-1-22-00273564_et_al.pdf;* NPR, ''Thousands Could Be Deported As Government Targets Asylum Mills' Clients'' (Sept. 28, 2018), *https://www.npr.org/sections/money/2018/09/28/652218318/thousands-could-be-deported-as-government-targets-asylum-mills-clients* (detailing Operation Fiction Writer in which over 3,500 primarily Chinese immigrants unlawfully obtained asylum, ''During that probe, federal prosecutors in New York rounded up 30 immigration lawyers, paralegals and interpreters who had helped immigrants fraudulently obtain asylum in Manhattan's Chinatown and in Flushing, Queens''); DOJ, Press Release, ''Defendants at Two New York City Firms Prepared Coached Clients to Lie During Immigration Proceedings'' (Feb. 18, 2021), *https://www.justice.gov/usao-sdny/pr/attorneys-and-managers-fraudulent-asylum-scheme-charged-manhattan-federal-court; Matter of Sofer,* 2023 NY Slip Op 00033 Decided on January 05, 2023 Appellate Division, First Department (Jan. 5, 2023), *https://law.justia.com/cases/new-york/appellate-division-first-department/2023/motion-no-2022-03963-case-no-2022-00928.html* (''On or about March 7, 2022, the Attorney Grievance Committee (Committee) filed a notice of petition and petition of charges pursuant to Judiciary Law § 90(2) and the Rules for Attorney Disciplinary Matter (22 NYCRR) § 1240.8 seeking an order that respondent be disciplined for professional misconduct related to his representation of six clients with regard to their immigration matters, particularly in filing asylum applications and/or cancellation of removal relief.''); Supreme Court of New Jersey Disciplinary Review Board, ''In the Matter of Douglas Andrew Grannan, an Attorney at Law'' Docket No. DRB 20–236 (June 2, 2021), *https://drblookupportal.judiciary.state.nj.us/DocumentHandler.ashx?document_id=1142939;* Supreme Judicial Court of Massachusetts, ''In re: Stephen A. Lagana'' No. BD–2010–072 from hearing by the Massachusetts Board of Bar Overseers (Aug. 8, 2010), *https://bbopublic.massbbo.org/web/f/bd10-072.pdf.*

[110] *See* EOIR, DOJ, ''List of Currently Disciplined Practitioners'' (May 14, 2025), *https://www.justice.gov/eoir/list-of-currently-disciplined-practitioners; see also* 8 CFR 1003.101.

[111] USCIS FDNS Systems and Integration Division Data, ''DOJ EOIR Disbarred Attorney Match to Global Asylum Receipts'' (May 28, 2025).

[112] Matthew Blaisdell and Michele Carney, ''Ethical Considerations Related to Affirmatively Filing an Application for Asylum for the Purpose of Applying for Cancellation of Removal and Adjustment of Status for a Nonpermanent Resident'' American Immigration Lawyers Association, (updated July 31, 2020) *https://www.aila.org/library/submitting-an-affirmative-asylum-app-ethical-qs.*

asylum-specific definition within 8 CFR, the American Bar Association's Model Rules, and the more general definition of ''frivolous'' found in 8 CFR; violate the requirement that an attorney provide candor to the tribunal; undercut the requirement that an attorney exhibit competence and diligence; and, in certain circumstances, rise to the level of criminal liability per 18 U.S.C. 1001 (knowing false statements) and 18 U.S.C. 1546 (fraud and misuse of visas and other immigration documents).[113]

However, these cases with ''Fraud Found'' SOFs, or other fraud possibilities relating to aliens or attorneys/representatives, are not the only concern. One of the purposes of this rule is to combat ''frivolous, fraudulent, and meritless'' asylum applications and their associated applications for employment authorization, but the FDNS ''Fraud Found'' data arguably only accounts for the ''fraudulent'' applications and likely not the ''frivolous'' or ''meritless'' applications. When FDNS finds fraud after an administrative investigation, the record contains sufficient evidence to conclude there was a knowingly false representation of a material fact with the intent to deceive.[114] While the ''Fraud Found'' data is not exhaustive, it is the best direct data USCIS has on these cases; USCIS could not track fraudulent cases that were not identified or cases with fraud indicators that were not referred internally to FDNS. Quantifying ''meritless'' cases seems even more difficult. In these cases, the alien's filing does not have to rise to the level of fraud or willful misrepresentation under INA 212(a)(6)(C)(i); rather, ''meritless'' cases are simply cases that have no value or, possibly, that do not meet the substantive requirements for asylum. ''Frivolous'' and ''meritless'' cases, by their definition, cannot be approved. However, these cases remain in the pending affirmative asylum caseload, and the aliens who filed them are eligible to apply for (c)(8) EADs as a result.

USCIS data from FY2015 to present helps scope this problem and reveals some startling trends. Of course, asylum applications have risen incredibly since FY2015, when USCIS received 83,463 new asylum applications and the number of pending cases was 118,217 cases.[115] In FY 2017, the new receipts reached 142,254 with a pending caseload of 306,078.[116] Then, receipts in FY 2018 began to drop for four consecutive years until 2021, when receipts were 65,518 with a pending caseload of 452,181.[117] In FY2022, new asylum receipts jumped to 247,790 with a pending caseload of 664,290.[118] In FY2023, new asylum receipts jumped again to 464,398, with a pending caseload of 1,081,440.[119] In FY2024, new asylum receipts dipped from the previous year slightly to 422,457; however the pending caseload continued to grow, reaching a high total of 1,374,006.[120] Through most of FY2025, new receipts are 331,883, and the pending caseload has grown to 1,525,933.[121] DHS provides in Table 2 data applicable to Form I–589, Application for Asylum and for Withholding of Removal (principals only) by FY, data type, and denial/referral reasons, FY2015–2025 (through May 22, 2025).

[113] *Id.*

[114] *See* USCIS, ''Policy Manual,'' *https://www.uscis.gov/policy-manual/volume-8-part-j-chapter-2* (last updated May 13, 2025).

[115] USCIS OPQ DATA, ''By Fiscal Year, Data Type, and Deny/Referral Reasons'' (May 22, 2025).

[116] *Id.*

[117] *Id.*

[118] *Id.*

[119] *Id.*

[120] *Id.*

[121] *Id.*

Table 2: USCIS Form I-589 Volume and Completion Data (FY 2015 through FY 2025).						
I-589 Data Type	Receipts	Pending	Total Completions	Approved	Admin Closed	Denial/ Referral
				(As a percentage of Total Completions)		
2015	83,463	118,217	34,546	13,797 (39.9%)	5,234 (15.2%)	15,515 (44.9%)
2016	116,295	206,764	27,746	9,112 (32.8%)	5,998 (21.6%)	12,636 (45.5%)
2017	142,254	306,078	42,939	12,284 (28.6%)	8,466 (19.7%)	22,189 (51.7%)
2018	108,308	343,647	70,738	16,383 (23.2%)	13,060 (18.5%)	41,295 (58.4%)
2019	101,035	374,588	70,094	17,129 (24.4%)	10,752 (15.3%)	42,213 (60.2%)
2020	99,152	422,173	51,565	9,952 (19.3%)	13,772 (26.7%)	27,841 (54.0%)
2021	65,518	452,181	35,509	5,793 (16.3%)	12,693 (35.7%)	17,023 (47.9%)
2022	247,790	664,290	35,678	7,576 (21.2%)	12,650 (35.5%)	15,452 (43.3%)
2023	464,398	1,081,440	47,247	10,811 (22.9%)	30,473 (64.5%)	5,963 (12.6%)
2024	422,457	1,374,006	129,891	17,175 (13.2%)	107,007 (82.4%)	5,709 (4.4%)
2025	331,883	1,525,933	180,069	8,667 (4.8%)	159,530 (88.6%)	11,872 (6.6%)
Source: USCIS OPQ, GLOBAL, HQRAIO, PAER0019436 (Nov. 4, 2025).						

Since 2015, new asylum receipt volumes have varied from a low of 65,518 in FY2021 to a high of 422,457 in FY2024—a 545% increase in four FYs. Over the same ten-year period, approval numbers also varied but not as wildly as new receipt volumes; approvals reached a low of 5,793 and a high of 17,175, also in FY2021 and FY2024, respectively (an increase of just under 200 percent). However, denials and referrals followed a different pattern. Since 2015, denials and referrals reached a high of 42,213 in FY2019 and a low of 5,709 in FY2024. Table 3 presents data applicable to Form I–589, Application for Asylum and for Withholding of Removal (principals only), by FY, from FY2015–2025 (through May 22, 2025), applicable to denials/referrals with a previously approved (c)(8) EAD.

Table 3: USCIS Form I-589 Volume and Completion Data (FY 2015 through FY 2025).

I-589 Data Type	Pending I-589	I-589 Denial/Referrals		
	With a Previously Approved I-765 C08	Total	With Previously Approved I-765 C08	Percentage of Total Denials/Referrals with a Previously Approved I-765
2015	67,304	15,515	4,578	29.5%
2016	96,502	12,636	5,345	42.3%
2017	113,524	22,189	9,667	43.6%
2018	106,673	41,295	11,172	27.1%
2019	95,945	42,213	10,427	24.7%
2020	89,489	27,841	4,890	17.6%
2021	84,068	17,023	3,298	19.4%
2022	122,526	15,452	4,903	31.7%
2023	192,049	5,963	4,351	73.0%
2024	156,722	5,709	5,087	89.1%
2025	13,916	11,872	9,475	79.8%

Source: USCIS OPQ, GLOBAL, HQRAIO, PAER0019436 (Nov. 4, 2025).

When cross-referencing all asylum application denials with asylum application denials where the alien had a previously approved application for employment authorization in the (c)(8) category, a notable pattern emerges. In FY2015, USCIS issued 15,515 denials or referrals to asylum applicants, but only 4,578 (29.5%) had one or more previously approved (c)(8) EAD.[122] By FY2023, USCIS issued 5,963 denials or referrals to asylum applicants, but 4,351 (73%) had one or more previously approved (c)(8) EAD.[123] In FY2024, USCIS issued 5,709 denials or referrals to asylum applicants, but 5,087 (89%) had one or more previously approved (c)(8) EAD.[124] In FY2025 (through May 22, 2025), USCIS issued 11,872 denials or referrals to asylum applicants, and 9,475 (79.8%) had one or more previously approved (c)(8) EAD.[125] These data are significant.

At the simplest level, if there were no asylum backlog and each asylum application received was adjudicated within 180 days, none of those aliens whose asylum applications were denied would have been granted an employment authorization. Looking at the percentages, it is clear there is an increasing correlation between asylum denials and previously approved (c)(8) EADs. Not only do these data serve as evidence that current asylum processing is not functioning properly, but it is also evidence that the processing is worsening. The INS's original intention of discouraging aliens from filing meritless asylum claims cannot be fulfilled given the backlog volume is at an all-time high and nearly 90% of asylum denials last FY had a previously approved (c)(8) EAD. USCIS notes that it is not necessarily assigning, and does not need to assign, any fraudulent or bad intent to this population. These are simply cases where the alien was ultimately found ineligible for asylum, but, due to current agency regulations, policies, and processes, was able to derive employment authorization despite asylum ineligibility.

Despite the relative lack in changes for the adjudication of EADs for aliens with pending asylum applications since the 1994 regulatory reform, the number of asylum applications, and with it the number of requests for employment authorization have increased exponentially, fueling a massive asylum backlog. In FY 1994, the year the then-INS promulgated the requirement that employment authorizations for aliens with pending asylum applications be adjudicated within 30 days, the INS received 144,577 applications for affirmative asylum.[126] In FY 1996, the year IIRIRA provided that, in the absence of exceptional circumstances, final administrative adjudications of asylum applications ''shall'' be completed within 180 days after the date applications are filed,[127] the INS received 107,130 applications for affirmative asylum and had a backlog of 453,580 pending at the end of the fiscal year.[128] In FY 2024, USCIS received more than 419,000 applications for affirmative asylum, and adjudicated or closed more than 126,000 affirmative asylum applications.[129] At the end of FY 2024, the number of affirmative asylum applications pending with USCIS grew to more than 1.35 million.[130]

As asylum caseloads both before USCIS and DOJ's EOIR have grown, so have employment authorization applications for aliens with pending asylum applications. For example, in FY 2013, USCIS received 41,000 initial (c)(8) EAD applications from aliens with pending asylum applications before

[122] USCIS OPQ DATA, ''*Form I–589, Application for Asylum and for Withholding of Removal (Principals only), Pending/Denial/Referral with a previously approved I–765(c)(8) by FY for FY2015–2025 (through May 22, 2025)*''.

[123] *Id.*

[124] *Id.*

[125] *Id.*

[126] INS, DOJ, ''1994 Statistical Yearbook of the Immigration and Naturalization Service'' (Feb. 1996), p. 83.

[127] IIRIRA sec. 604, Public Law 104–208, 110 Stat. 3009, 3009–694, codified at INA sec. 208(d)(5)(A)(iii), 8 U.S.C. 1158(d)(5)(A)(iii).

[128] INS, DOJ, ''1996 Statistical Yearbook of the Immigration and Naturalization Service'' (Oct. 1997), p. 90–91.

[129] USCIS, ''All USCIS Application Petition Form Types (Fiscal Year 2024, Quarter 4)'' (Dec. 18, 2024), *https://www.uscis.gov/sites/default/files/document/data/quarterly_all_forms_fy2024_q4.xlsx.*

[130] USCIS, ''All USCIS Application Petition Form Types (Fiscal Year 2024, Quarter 4)'' (Dec. 18, 2024), *https://www.uscis.gov/sites/default/files/document/data/quarterly_all_forms_fy2024_q4.xlsx.*

USCIS or EOIR; in the month of January 2025 alone, USCIS received approximately 152,000 initial (c)(8) EAD applications for the same population, in addition to nearly 60,000 renewal (c)(8) EAD applications from aliens with pending asylum applications.[131] The large influx has consumed an extraordinary amount of USCIS resources.

As a result of all these factors, DHS finds itself in a comparatively worse position to that of the INS in the early 1990s. Asylum application filings, and with them the asylum backlog, have grown to an unmanageable size. The asylum program continues to attract frivolous, fraudulent, or otherwise meritless claims, likely incentivized by the decades long processing times and access to employment authorization. Many modern asylum applicants are fleeing generalized violence and poor economic conditions in their home countries, but these, in and of themselves, are not grounds for asylum.[132]

Protecting Americans Workers

In addition to all the factors discussed at length above, such as overall asylum program integrity and specifically disincentivizing frivolous, fraudulent, and meritless asylum applications, DHS recognizes the importance of U.S workers as well. DHS notes that when adjudicating certain employment-based visas, statutory authorities mandate that such alien workers not displace qualified, available American workers who are capable of performing such services or labor, and similarly that such alien employment not adversely affect the wages and working conditions of workers in the United States.[133] DHS is in no way equating asylum applicants with temporary nonagricultural workers; rather DHS merely notes the mandatory consideration for American workers in certain visa programs. DHS recognizes there is historical precedent to consider American workers when DHS exercises discretion to determine the availability and scope of employment authorization for aliens.

For example, in 1974 the former INS Commissioner Leonard F. Chapman, Jr. announced a significant change to the summer program policy for foreign students.[134] Under the new policy, foreign students seeking summer employment had to apply and obtain permission from the INS.[135] In changing the long-standing student employment policy, the INS recognized the foreign policy benefits for young aliens studying in the United States, but determined that the protection of job opportunities for American workers should be the ultimate consideration.[136] The following year, INS General Counsel Sam Bernsen gave a presentation detailing this INS' decision further.[137] He recognized that F–1 student work was not banned by statute, but was concerned that ''a United States citizen or a United States lawful permanent resident [could] be fired from a campus job to provide employment for a nonimmigrant student.'' [138] Continuing, Bernsen stated ''INA had to weigh the adverse effect on foreign relations against the adverse effect on the labor market.'' [139] This ultimately meant students who wanted employment had to apply before the INS and establish eligibility under the prescribed rules.

Unfortunately, Department of State (DOS) data on F–1 student visa admissions only goes back to 1987,[140] so official data for 1974 F–1 visa admissions is not available from DOS. However, that data is available from the Government Accountability Office (GAO).[141] According to the GAO, there were approximately 154,580 F–1 students in 1974.[142] If every single one of the F–1 students displaced an American worker that is a relatively small number compared to DHS's current situation with (c)(8) EAD applications. USCIS received 422,457 Form I–589s and 1.2 million applications for initial (c)(8) EADS in FY 2024.[143] DHS notes that, if INS was justified in terminating a form of work authorization in 1974 in order to prevent the possible displacement of approximately 150,000 American workers, DHS would similarly be justified today to consider the potential impact on up to 1.2 million American workers when reviewing a discretionary EAD category like the (c)(8)s.

Building an Efficient Asylum System

As the INS did in 1994, DHS is implementing limitations on the availability of employment authorization and more stringent requirements for eligibility for employment authorization, in order to protect U.S. national security and public safety, better manage the asylum caseload, and disincentivize aliens who do not have meritorious asylum claims from exploiting the asylum program to seek economic opportunity in the United States. 59 FR 14779 (Mar. 30, 1994); 59 FR 62284 (Dec. 5, 1994).

As it currently functions, the asylum system is overwhelmed, unresponsive, and vulnerable to abuse. Congress gave the Executive Branch the discretion to make employment authorization available to asylum applicants by regulation.[144] Employment authorization for aliens seeking asylum is not an entitlement under statute. DHS believes that this rule is key to disincentivizing aliens from using asylum primarily as a path to seek employment authorization in the United States and to ensuring more timely processing of asylum applications. By allowing DHS to focus resources on reducing the asylum backlog, ensuring that asylum applications are processed in a fair and timely manner, and divorcing the filing of an asylum application with a near automatic grant

[131] USCIS, ''Form I–765, Application for Employment Authorization, Eligibility Category and Filing Type (Fiscal Year 2025, Quarter 1)'' (April 30, 2025), *https://www.uscis.gov/sites/default/files/document/data/i765_application_for_employment_fy2025_q1.xlsx.*

[132] *See* Congressional Research Service, ''Central American Migration: Root Causes and U.S. Policy'' (Oct. 30, 2024), *https://www.congress.gov/crs-product/IF11151;* Congressional Research Service, ''Asylum Eligibility for Applicants Fleeing Gang and Domestic Violence: Recent Developments'' (Aug. 6, 2021), *https://www.congress.gov/crs_external_products/LSB/PDF/LSB10617/LSB10617.3.pdf,* discussing whether fleeing generalized violence or domestic violence is a legitimate basis for asylum relief; Council on Foreign Relations, ''Why Six Countries Account for Most Migrants at the U.S.-Mexico Border'' (July 9, 2024), *https://www.cfr.org/article/why-six-countries-account-most-migrants-us-mexico-border;* Council on Foreign Relations, ''Central America's Turbulent Northern Triangle'' (July 12, 2023), *https://www.cfr.org/backgrounder/central-americas-turbulent-northern-triangle;* United Nations High Commissioner for Refugees, ''El Salvador, Guatemala and Honduras: Global Appeal 2025 Situation Overview'' (2025), *https://reporting.unhcr.org/sites/default/files/2024-11/El%20Salvador%2C%20Guatemala%20and%20Honduras%20Situation%20Overview.pdf.*

[133] *See* INA sec. 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b); *see also* 8 CFR 214.2(h)(6)(i).

[134] *See* American Council for Nationalities Service, Interpreter Releases, ''Foreign Student Work Policy Changed'' (May 14, 1974) Vol. 51, No. 16.

[135] *Id.*

[136] *Id.*

[137] *See* Sam Bernsen, General Counsel, INS, DOJ, ''Leave to Labor'' (September 2, 1975), American Counsel for Nationalities Service Interpreter Releases, Vol. 52, No 35.

[138] *See* Sam Bernsen, General Counsel, INS, DOJ, ''Leave to Labor'' (September 2, 1975), American Counsel for Nationalities Service Interpreter Releases, Vol. 52, No 35.

[139] *Id.*

[140] *See https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/NIVClassIssuedDetailed/NIVClassIssued-DetailedFY1987-1991.pdf.*

[141] *See* GAO, ''Controls Over Foreign Students in U.S. Postsecondary Institutions Are Still Ineffective'' (Mar. 10, 1983), *https://www.gao.gov/products/hrd-83-27.*

[142] *Id.*

[143] USCIS, ''All USCIS Application Petition Form Types (Fiscal Year 2024, Quarter 4)'' (Dec. 18, 2024), *https://www.uscis.gov/sites/default/files/document/data/quarterly_all_forms_fy2024_q4.xlsx.*

[144] INA sec. 208(d)(2).

of employment authorization, this regulation will help reverse the course of an overwhelmed system that has invited abuse.

DHS is now focusing on this regulation after years of different efforts to address the building backlog and significant program integrity concerns within the asylum program. The number of asylum officers USCIS employs increased from 349 in 2015 to 979 in 2025, but the asylum backlog has increased exponentially in spite of this. In the last decade, USCIS has built or expanded asylum offices in 11 cities to provide dedicated workspaces to accommodate the rapid growth in staffing.[145] USCIS has also implemented a number of operational changes designed to realize efficiency gains. These changes include post-interview case processing goals, the development of new technology, and the expansion of digitization to modernize case management.[146] Additionally, in 2024, USCIS first used innovative technology to identify asylum applications filed by aliens in removal proceedings and launched an automated process to administratively close those cases, thereby using fewer asylum staffing resources to quickly remove those cases from the pending caseload while permitting officers to focus on other pending cases. Subsequently, USCIS expanded its technological capabilities to start rejecting asylum applications filed by online applicants in removal proceedings, consistent with existing procedures to reject paper asylum applications filed by aliens in removal proceedings.[147] USCIS also used FY 2024 appropriated funds to support technology initiatives to digitize existing paper-filed asylum applications in the backlog, automate additional case processing steps, improve interview scheduling, and automatically identify multiple asylum applications filed by the same principal applicant using different A-numbers, all of which supported backlog reduction and decreased overall processing times.[148]

Despite DHS's fervent efforts to address the backlog, the recent, drastic increase in both affirmative and defensive asylum filings has prevented the agency from seeing any gains. For example, from FY 2022 to FY 2023, the number of affirmative asylum filings nearly doubled from 247,074 to 463,320 applications.[149] The total number of defensively filed asylum applications also nearly doubled from 2022 to 2023, from 260,830 to 488,620 applications.[150] In July 2024, the DHS Office of Inspector General found that more than 786,000 affirmative asylum applications were pending more than 180 days.[151] In addition, a concurrent and massive increase in border encounters also contributed to the growth of the backlog because USCIS has had to divert resources and asylum officers from processing affirmative asylum backlog cases to address the high volume of credible fear and reasonable fear cases [152] that require interviews in a very short period of time. In periods of peak credible fear and reasonable fear volumes, all available USCIS Asylum Division staff were temporarily assigned to these caseloads, reducing the number of asylum officers available to conduct affirmative asylum interviews.[153] In 2023, USCIS also trained more than 1,000 employees from across USCIS to assist with the credible fear workload as needed.[154] This diversion of resources to screening interviews further prevented USCIS from making meaningful progress to reduce or eliminate the affirmative asylum backlog. As affirmative asylum cases slowly wind their way through the immigration system, aliens continue to receive EADs, even though many or most will be found ineligible for asylum.[155]

Another consequence of the asylum backlog is that many aliens who will ultimately be denied asylum are able to remain in the United States and obtain employment authorization. As discussed above, DHS believes that imposing stricter requirements for (c)(8) EAD eligibility will disincentivize some economic migrants and others who would ultimately not qualify for asylum from applying and possibly from making the arduous journey to the United States. For example, in addition to the current regulatory language that excludes an alien with an aggravated felony conviction as described under INA 101(a)(43), DHS proposes to codify in regulation that it will exclude from (c)(8) EAD eligibility any alien where there is reason to believe that the alien may be barred from a grant of asylum due to one of the criminal bars to asylum under sections 208(b)(2)(A)(ii)–(iii). These are also grounds for denial of the alien's underlying asylum application. *See* INA 208(b)(2) and 8 U.S.C. 1158(b)(2). This would be a sensible and logical change. Further, the change would increase program integrity by ensuring that an alien who is statutorily ineligible for asylum cannot file a frivolous or meritless asylum application in order to receive a (c)(8) EAD and take advantage of current USCIS processing backlogs to obtain employment authorization. Rather, under these proposed changes, aliens who are ineligible for asylum would likewise be ineligible for a ''pending asylum'' EAD. As detailed above, the 1994 INS's final regulatory asylum reform made clear, ''[t]his rule will discourage applicants from filing meritless claims solely as a means to obtain employment authorization. . . . When the system is fully operational, asylum officers are expected to grant or refer affirmative claims within about 60 days. . . . All applicants could have work authorization after 180 days, unless their claims have been denied by an Immigration Judge.'' 59 FR at 62290–91.

This is a significant point that is frequently lost given the current size of the asylum and asylum EAD backlogs: the INS designed the current regulatory landscape to be a means of primarily adjudicating the underlying asylum application. The intent was to give INS—today USCIS—180 days to

[145] USCIS, DHS, ''Asylum Application Processing Fiscal Year 2023'' (Nov. 1, 2023), *https://www.dhs.gov/sites/default/files/2024-01/2023_1101_uscis_asylum_application_processing_fy2023.pdf.*

[146] *Id.*

[147] DHS Office of Inspector General, ''USCIS Faces Challenges Meeting Statutory Timelines and Reducing Its Backlog of Affirmative Asylum Claims'' (July 3, 2024), *https://www.oig.dhs.gov/sites/default/files/assets/2024-07/OIG-24-36-Jul24.pdf.*

[148] Letter from Representative Raúl M. Grijalva (July 11, 2024) and DHS response (Aug. 16, 2024), *https://www.uscis.gov/sites/default/files/document/foia/AffirmativeAsylum-RepresentativeGrijalva.pdf.*

[149] Noah Schofield and Amanda Yap, Office of Homeland Security Statistics, ''Asylees: 2023'' (Oct. 2024), *https://ohss.dhs.gov/sites/default/files/2024-10/2024_1002_ohss_asylees_fy2023.pdf.*

[150] *Id.*

[151] Office of Inspector General, DHS, ''USCIS Faces Challenges Meeting Statutory Timelines and Reducing Its Backlog of Affirmative Asylum Claims'' (July 3, 2024), *https://www.oig.dhs.gov/sites/default/files/assets/2024-07/OIG-24-36-Jul24.pdf.*

[152] *See* 8 CFR 208.31, 8 CFR 235.3(b)(4). Any alien who indicates a fear of persecution or torture, a fear of return, or an intention to apply for asylum during the course of the expedited removal process is referred to an asylum officer for an interview to determine whether the alien has a credible fear of persecution or torture in the country of return. Aliens with prior removal orders for illegal entry or who are issued an administrative removal order for having been convicted of an aggravated felony may be referred to the asylum officer for a determination of whether the alien has a reasonable fear of persecution or torture. These screening interviews are required to be conducted by USCIS within a designated timeframe.

[153] *See* USCIS, DHS, ''Asylum Application Processing Fiscal Year 2023 Report to Congress'' at 4, (Nov. 1, 2023), *https://edit.dhs.gov/sites/default/files/2024-01/2023_1101_uscis_asylum_application_processing_fy2023.pdf.*

[154] See email entitled ''Message from the Director—USCIS to Support Credible Fear Screening'', April 25, 2023, located in the administrative record.

[155] EOIR, *Asylum Decisions* (Apr.4, 2025), *https://www.justice.gov/eoir/media/1344851/dl?inline.*

adjudicate the underlying asylum application and, if that could not be accomplished, then the alien was not harmed because they were eligible for employment authorization after 180 days. USCIS aimed to adjudicate referrals of asylum applications within 60 days from the date a complete asylum application was filed with USCIS, which would then leave 120 remaining days for EOIR to complete processing of the referred asylum application.[156] As designed, the alien's asylum application would be approved and any pending or approved application for employment authorization was rendered moot by the grant of asylum or the alien's asylum application would be denied and any application for employment authorization was denied since the alien's asylum application was no longer pending—but one of those two outcomes was supposed to be reached within 180 days of filing. At the time, the application for employment authorization was an interim or ''bridge'' benefit only until the asylum application was adjudicated.

Due to the size of the current affirmative asylum pending caseload, adjudication of the asylum application within 180 days of filing in accordance with INA 208(d)(5)(A)(iii) is extremely difficult. In FY2022, FY2023, and FY2024, the average processing time for asylum applications that received a final decision (approval, administrative closure, or denial/referral) was 35.5 months, 25.0 months, and 22.8 months, respectively.[157] The processing times far exceed the 180-day statutory requirement, but are nevertheless trending the right direction. However, DHS believes that the level of effort currently going into asylum and related EAD adjudications is not sustainable, which is one reason DHS needs these proposed regulatory changes. If USCIS were no longer governed by the 30-day processing timeframe, it would permit the agency to focus resources on the pending asylum applications, which in and of itself would reduce (c)(8) EAD application filings. These cases drain agency resources from other adjudications. Regardless of the backlog, the age of cases, or any asylum application processing changes, under 8 CFR 208.7(a)(1) USCIS is currently still required to adjudicate pending asylum applications for employment authorization within 30 days of filing. The changes proposed in this rule, specifically the pausing of (c)(8) EAD application acceptances and the 365-day wait to file an application for employment authorization, would allow USCIS to focus more on the underlying asylum applications—just as the INS attempted to do with the 1994 regulatory reforms.

Misalignment of Eligibility Requirements

Another problem unrelated to the pending affirmative asylum caseload that further acts as an incentive for frivolous, fraudulent, and meritless filings is the fact that eligibility requirements between the asylum application and the pending asylum application for employment authorization do not align. Currently, an asylum application will be denied if the alien was a persecutor, convicted of a particularly serious crime, committed a serious non-political crime outside the United States, or is a danger to the security of the United States, among other reasons. See INA 208(b)(2), 8 U.S.C. 1158(b)(2). However, an alien applying for employment authorization based on a pending asylum application is only ineligible based on an aggravated felony conviction.[158] See 8 CFR 208.7(a)(1). The disparity between eligibility requirements for the asylum application and the (c)(8) EAD renders aliens who under no set of circumstances could be approved for asylum (*e.g.,* persecutors, aliens convicted of particularly serious crimes, etc.) eligible for employment authorization while waiting for their asylum application to be denied. This, in turn, incentivizes more aliens to file frivolous, fraudulent, or meritless asylum applications since they will obtain employment authorization 180 days after filing the asylum application—even if statutorily ineligible for asylum—and the alien's asylum application will likely remain pending for years given the asylum backlog. Previously, neither form had an associated filing fee,[159] so there was no downside to filing this way because, even if USCIS denied the asylum application years later, the alien was employment authorized during that time. DHS's proposed rulemaking attempts to align the eligibility requirements and end the incentive to abuse the asylum system. Under this proposal, aliens would still apply for employment authorization but DHS would, as part of the screening and vetting of the alien as part of the (c)(8) EAD adjudication, essentially determine if the alien was statutorily or regulatorily ineligible or barred from asylum approval and, if so, DHS would deny the application for employment authorization.

The need to determine whether the alien applying for employment authorization is also not ineligible for asylum justifies an additional and related change being made in this rule as well, the mandatory collection of biometrics for both initial and renewal (c)(8) EAD applications and the requirement that applicants for an EAD submit all records of charges, arrests, and convictions as part of their EAD application. DHS would not be able to meaningfully screen and vet these aliens in order to determine whether they are ineligible or barred from asylum approval without biometrics and evidence of any criminal history. DHS already requires biometrics from asylum applicants; for the same reason DHS now proposes to collect biometrics on the pending application for employment authorization. Requiring asylum applicants submit biometrics and provide all records of charges, arrests, and convictions as part of their EAD application helps ensure that DHS has accurate and complete information before making a decision on the employment authorization application.[160] DHS is committed to enforcing our immigration laws by securing our borders, disrupting criminal organizations that bring people, drugs, and goods across the border illegally, and reducing abuse of our processes and laws.

DHS believes the provisions of this proposed rule will enable meritorious applications to be granted sooner and meritless applications to be referred or

[156] USCIS, *Affirmative Asylum Procedures Manual* (Feb. 2025), sec. III.F.2.b., available at *https://www.uscis.gov/sites/default/files/document/guides/AAPM.pdf;* USCIS, *USCIS Asylum Division Quarterly Stakeholder Meeting* (Feb. 2019), p. 2, available at *https://www.uscis.gov/sites/default/files/document/outreach-engagements/PED_StakeholderPrivateAgenda_02222019.pdf.*

[157] USCIS OPQ DATA, ''I–589 Processing Time With and Without Admin Closed by Fiscal Year (FY2022–2025) (May 27, 2025). DHS notes these processing times are under LIFO processing so these are still the ''newer'' cases being adjudicated. Further, these adjudications are not reducing the overall size of the asylum backlog.

[158] This is not the only grounds for denial, rather it renders the alien ineligible. As stated above, the alien can be denied for filing the application for employment authorization before 150 days have passed since filing the asylum application. 8 CFR 208.7(a)(1).

[159] *See* USCIS, ''G–1055, Fee Schedule,'' (Apr. 18, 2025), *https://www.uscis.gov/g-1055.*

[160] USCIS criminal history record information requests to the FBI are not always complete or up-to-date, depending on the jurisdiction reporting the information. *See generally* National Crime Prevention and Privacy Compact, 34 U.S.C. 40311–40316 (formerly cited as 42 U.S.C. 14611–14616), including the definitions of ''party state'' and ''nonparty state'' found therein.

denied sooner. DHS recognizes that these reforms will apply equally to aliens with meritorious and meritless asylum claims and that either population may experience some degree of economic hardship as a result of heightened requirements for an EAD, the extended waiting period, and the pauses in USCIS' acceptance of EAD applications from asylum applicants. DHS also recognizes that some aliens whose asylum applications would have been found meritorious—*i.e.,* those who would be able to show a well-founded fear of persecution in their country of nationality (or last habitual residence) on account of a protected ground—may abandon their applications or decide not to file applications and forego the protection that asylum would provide because they would not be able to support themselves while their asylum application is adjudicated. DHS recognizes that extending the processing time for employment authorization may also factor into a potentially meritorious applicant's decision-making process before applying for asylum. Due to this rule's proposed increased waiting periods before an alien may receive employment authorization, there may be aliens with potentially meritorious asylum claims who instead return to a country where they may fear harm. DHS has seriously considered the potential harm to this population and has determined that the benefits of this rule outweigh these concerns: increasing program integrity, focusing USCIS resources on the underlying asylum backlog, ensuring aggravated felons and criminal aliens are not granted work authorization, biometrically verifying the identity of all (c)(8) EAD applicants and identifying any criminal history, if applicable, and disincentivizing asylum as a means to file a frivolous, fraudulent, or meritless application solely to obtain work authorization. Objectively speaking, the asylum system is overwhelmed and in need of additional reforms. The backlog of asylum cases weakens the integrity of the system, allowing thousands of non-meritorious cases to languish and obstructing the agency from addressing potential public safety and national security concerns until years down the road when the cases are finally adjudicated. The security of the United States and the integrity of our immigration processes outweighs the potential harm to a subset of the asylum applicant population. DHS has also considered potential hardship caused by a lengthier wait before filing an application for employment authorization or receiving employment authorization, which may lead some aliens to attempt to work without authorization. In order to minimize unauthorized employment, DHS has instituted certain compliance measures through the Immigration Reform and Control Act (IRCA), which requires employers to verify the identity and employment eligibility of their employees and sets forth criminal and civil sanctions for employment-related violations. *See* Public Law 99–603, 100 Stat. 3445 (1986). Additionally, section 274A(b) of the INA, 8 U.S.C. 1324a(b), requires employers to verify the identity and employment eligibility of all aliens hired in the United States. The Employment Eligibility Verification form (Form I–9) is used by employers to document this verification. Employers who fail to properly complete Forms I–9 are subject to civil money penalties for paperwork violations.[161] This process serves to protect the public and aliens who may attempt to work without authorization, which makes those aliens vulnerable to exploitation by their employers. Aliens who still choose to engage in unauthorized employment should be aware that this may render them removable and ineligible for future benefits such as adjustment of status.[162] Finally, DHS acknowledges there may be unknown impacts to the above populations, but DHS's responsibility to safeguarding national security and public safety takes precedence and justifies the approach proposed here.

DHS's ultimate goal is to strengthen the benefit integrity of the asylum process and help ensure that the system is not being exploited. DHS has determined that the current model for obtaining employment authorization as an asylum applicant is no longer practicable, but also inconsistent with the original intent of the asylum system. The intent has always been that once an asylum claim is filed, a decision is made in a timely manner so that there is no need for an employment authorization document until the alien has received the benefit. DHS has determined it is reasonable to require additional time and security requirements on asylum applicants before they may apply for and receive an EAD. The urgency to protect national security, public safety, and maintain the integrity of the U.S. asylum and immigration system outweighs the hardship that may be imposed by an additional waiting period the meritorious asylum applicant population would experience prior to receiving an EAD.

1. Other Regulatory Alternatives Considered

DHS considered several alternatives before deciding on the changes ultimately proposed in this rule and also recently implemented new filing fees that impact both asylum applications and pending asylum application-based applications for employment authorization.

On July 22, 2025, USCIS published the H.R.-1 **Federal Register** Notice to inform the public of a new series of fees for various immigration-related forms established in the OBBBA.[163] USCIS recently implemented statutorily-mandated filing fees, including a $100 non-waivable filing fee for the asylum application and $100 annual fee for every year the applicant's asylum application is pending, as well as a $550 non-waivable filing fee for the initial (c)(8) employment authorization application.[164] Per statute, 50 percent of the asylum application fee is credited to DHS. None of the annual fee revenue is credited to USCIS and 25-percent of the (c)(8) employment authorization application fees are credited to USCIS.

Historically, fee changes alone have not caused significant changes in benefits requests, particularly when there are no alternatives.[165] Therefore, DHS does not think that the new asylum application fees from H.R.-1 alone are sufficient to dissuade the unsustainable volumes of meritless asylum claims identified in this rule, although DHS believes that it is possible that the fees may enhance the effects of this proposed rule to deter frivolous, fraudulent, or otherwise meritless asylum applications. Furthermore, as described in sections III.B and III.C of this proposed rule, and discussed by recent USCIS rulemakings 89 FR 101210 (Dec. 13, 2024), USCIS efforts to apply

[161] *See* INA sec. 274A(e)(5), 8 U.S.C. 1324a(e)(5).

[162] *See, e.g.,* INA sec. 237(a)(1)(C), 8 U.S.C. 1227(a)(1)(C); 8 CFR 214.1(e); INA sec. 274A, 8 U.S.C. 1324a.

[163] USCIS Immigration Fees Required by HR–1 Reconciliation Bill, 90 FR 34511 (Jul. 22, 2025); see H.R.1—One Big Beautiful Bill Act (OBBBA), Public Law 119–21, Title X, 139 Stat. 72. *See* USCIS Immigration Fees Required by HR–1 Reconciliation Bill, 90 FR 34511 (July 22, 2025).

[164] On Oct. 30, 2025, USCIS paused the implementation of the annual asylum fee, as required by an order issued in in *Asylum Seeker Advocacy Project* v. *United States Citizenship and Immigration Services, et al.,* SAG–25–03299 (D. Md.). That order does not affect this rule. *See Asylum Seekers Advocacy Project* v. *United States Citizenship and Immigration Svcs.,* No. 25–03299 (D.Md. Oct. 30. 2025).

[165] See USCIS, FY 2022–2023 Fee Review Regulatory Impact Analysis (RIA), *https://www.regulations.gov/document/USCIS-2021-0010-0031*; See also USCIS, FY 2022–2023 Fee Rule Price Elasticity Regression Analysis, *https://www.regulations.gov/document/USCIS-2021-0010-0033.*

additional resources toward faster processing of asylum and (c)(8) employment authorization applications have consistently failed to match rapid growth in volumes. DHS argues this is because the employment authorization for longer durations caused by persistent asylum backlogs have incentivized more asylum claims.[166]

One alternative DHS considered and evaluated was the possibility of re-publishing the elimination of the 30-day EAD processing timeframe rule (''Timeline Repeal Rule'') from 2020, but with updated filing data, more recent economic analysis, and additional justification for the proposed changes. DHS recognizes that any such changes are within the Secretary's authority under INA 274A(h)(3)(B) (8 U.S.C. 1324a(h)(3)(B)), INA 208(d)(1) and (d)(5)(B) (8 U.S.C. 1158(d)(1) and (d)(5)(B)), and INA 208(d)(2) (8 U.S.C. 1158(d)(2)). However, DHS is mindful of the *CASA de Maryland, Inc.* v. *Wolf* holding that determined the elimination of the 30-day Asylum EAD clock (''Timeline Repeal Rule'') was arbitrary and capricious for multiple different reasons. That court found that USCIS' rationale for elimination of the 30-day processing timeframe belied the evidence in the record and USCIS' responses to public comments were conclusory and reflected that the agency did not consider important policy alternatives.[167] Specifically, the court was not convinced that USCIS considered imposing a longer processing timeframe instead of removing the timeframe altogether.[168] Despite the fact that DHS still believes there should be no processing timeframe on (c)(8) EADs—just as there are currently no processing timeframes on any other EAD category—DHS was uncertain if a second proposed outright elimination of the (c)(8) EAD processing timeframe would be successful even with updated filing data, more recent economic analysis, additional consideration of alternatives, and additional justifications. A significant amount of work goes into regulatory changes, and DHS would rather not risk another years long effort merely to be subject to adverse court action and, in the end, still be required to adjudicate pending asylum applications and associated employment authorization applications under the current, and flawed, regulatory authorities and timeframes.

A second alternative DHS considered and evaluated was extending the waiting period for filing an application for employment authorization based on a pending asylum application from the current 150 days to a significantly longer period, something closer to four or five years. Extending this waiting period would be well within the Secretary's authority under INA 274A(h)(3)(B) (8 U.S.C. 1324a(h)(3)(B)), INA 208(d)(1) and (d)(5)(B) (8 U.S.C. 1158(d)(1) and (d)(5)(B)), and INA 208(d)(2) (8 U.S.C. 1158(d)(2)), which clearly recognize the discretionary authority to extend employment authorization to aliens, the authority to establish regulations concerning the procedures and conditions on asylum applications, and the discretion to grant employment authorization to aliens applying for asylum if 180 days have passed since filing the application for asylum. The benefits of such an extension are that it would essentially remove all screening and vetting roadblocks discussed above (*e.g.,* ASC appointment delays, 60 day-pause for referrals to ICE, etc.) and it would also remove any incentive for aliens to file frivolous, fraudulent, or otherwise meritless asylum applications in order to receive employment authorization. Under such a proposal, very few aliens would actually wait five years for their initial employment authorization because asylum cases are currently worked under LIFO processing, so the overwhelming majority of recent asylum applicants would receive a final adjudication in less than five years. Even without the proposed regulatory changes DHS needs to improve operations as well as screening and vetting, in FY2022, FY2023, and FY2024, the average processing time for asylum applications that received a final decision (approval, administrative closure, denial/referral) was 35.5 months, 25.0 months, and 22.8 months, respectively.[169] While the processing times far exceed the 180-day target provided in INA 208(d)(5)(A)(iii), they are trending in the right direction and are less than the four or five year alternative proposal considered.

DHS ultimately decided not to extend the 150-day EAD clock this far for several reasons. While a four to five year waiting period would be a strong disincentive for frivolous, fraudulent, or meritless applications, this would likely lead to strong opposition from immigration advocates and asylum applicants who may view this fixed and lengthy change in the waiting period as unduly harsh. While the proposed pause and restart method will likely lead to a years-long wait as well, that pause can be lifted, unlike the change proposed in this second alternative. In the end, DHS determined that while a very strong disincentive for meritless filings, there would be numerous and strong public comments that did not support such a change, and the justification for such an extension of that duration may not be supported by data.

Another alternative considered by DHS was ending employment authorization for pending asylum applicants altogether, in other words, terminating the (c)(8) EAD category. Eliminating the (c)(8) EAD category would be well within the Secretary's authority under INA 274A(h)(3)(B) (8 U.S.C. 1324a(h)(3)(B)), INA 208(d)(1) and (d)(5)(B) (8 U.S.C. 1158(d)(1) and (d)(5)(B)), and INA 208(d)(2) (8 U.S.C. 1158(d)(2)), which clearly recognize the discretionary authority to extend employment authorization to aliens, the authority to establish regulations concerning the procedures and conditions on asylum applications, and the discretion to grant employment authorization to aliens applying for asylum if 180 days have passed since filing the application for asylum. An alien with a pending asylum application is not entitled to employment authorization by statute, but Congress granted the Secretary discretion to authorize employment, through regulations, for these aliens while the asylum application is pending adjudication. *See* INA 208(d)(2), 8 U.S.C. 1158(d)(2). This alternative would obviate the need to screen and vet because there would be no application for employment authorization submitted by the alien. This alternative would really be the strongest disincentive possible for filing frivolous, fraudulent, or meritless asylum filings, not by adding a delay but by completely eliminating temporary employment authorization as an incentive for filing an asylum application. This option would eliminate any benefit to having a pending, but meritless asylum application in the backlog for years.

[166] See USCIS, Increase of the Automatic Extension Period of Employment Authorization Final Rule's Background section detailing efforts to address EAD backlogs over the last 5 years. Section B.4 acknowledges asylum backlogs grew in FY23 despite USCIS's best efforts, and that this further contributed to an unsustainable quantity of (c)(8) EAD renewals in FY24. *https://www.federalregister.gov/documents/2024/12/13/2024-28584/increase-of-the-automatic-extension-period-of-employment-authorization-and-documentation-for-certain.*

[167] *See CASA de Maryland, Inc.* v. *Wolf,* 486 F.Supp.3d 928, 961–963 (D. Md. 2020).

[168] *See id.*

[169] USCIS OPQ DATA, ''I–589 Processing Time With and Without Admin Closed by Fiscal Year (FY2022–2025) (May 27, 2025).

Under such a proposal, with no (c)(8) EAD to apply for, aliens with pending asylum applications would not be employment authorized until USCIS approved the underlying asylum application.

DHS ultimately decided not to pursue such an alternative at this time. First, DHS has already established that the primary problem is the processing of the volume of cases in the backlog. Second, because employment authorization for pending asylum applicants has been available for decades, since prior to the INS's 1994 asylum reform rulemakings, it is not clear at this time whether data exists to support such a change. Moreover, DHS was concerned with the anticipated public comments that did not support such a change. Additionally, DHS believes that the proposed provision of this rule tethering employment authorization to asylum processing times by pausing the acceptance of initial (c)(8) EADs if average asylum processing rises above 180 days for 90 consecutive days would achieve the same positive impact that terminating the (c)(8) EAD category altogether would achieve but through less severe means.

Should this rule prove ineffective or be enjoined, DHS will likely re-evaluate one or more of these alternative options for future asylum applications and their associated employment authorization applications given the ongoing incentive they represent for illegal entry to the United States and abuse of the asylum system to the detriment of meritorious asylum seekers.

D. Background

1. Eligibility for Asylum

Asylum is a discretionary benefit that can be granted by the Secretary or Attorney General if the alien establishes, among other things, that he or she has experienced past persecution or has a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA sec. 208(b)(1), 8 U.S.C. 1158(b)(1) (providing that the Attorney General and Secretary ''may'' grant asylum to refugees); INA sec. 101(a)(42)(A), 8 U.S.C. 1101(a)(42)(A) (defining ''refugee''). The INA bars certain aliens from obtaining asylum, including aliens who are persecutors, have been convicted of a particularly serious crime (which includes aggravated felonies), have committed serious nonpolitical crimes outside of the United States, are a danger to the security of the United States, have engaged in certain terrorism-related activities or are members of terrorist organizations, or were firmly resettled in a third country.[170]

The INA also bars certain aliens from applying for asylum.[171] Aliens generally must apply for asylum within 1 year from the date of their last arrival in the United States.[172] An alien who files for asylum after the 1-year filing deadline is not eligible to apply for asylum unless the alien demonstrates that changed circumstances materially affected the alien's eligibility for asylum or extraordinary circumstances delayed filing during the 1-year period, and that the application was filed within a reasonable period of time given the changed or extraordinary circumstances.[173] Even if an alien meets all the criteria for asylum, including establishing past persecution or a well-founded fear of future persecution and any exceptions to late filing, the Secretary or Attorney General can still deny asylum as a matter of discretion.[174]

Aliens who are granted asylum cannot be removed or returned to their country of nationality or last habitual residence, are employment authorized incident to their asylee status, and may be permitted to travel outside of the United States with prior consent from the Secretary.[175] Asylum can be terminated if the alien was not eligible for asylum status at the time of the asylum grant or is otherwise no longer eligible for asylum under the law.[176]

Aliens may include their spouse and children who are physically present in the United States as dependents on their asylum application at the time they file or at any time until a final decision is made on the application.[177] The alien and their dependents are considered asylum applicants, and each applicant may individually file an application for a (c)(8) EAD.

2. Affirmative vs. Defensive Filings

To request asylum, an alien must file Form I–589, Application for Asylum and for Withholding of Removal, with either USCIS or the immigration court (EOIR). Asylum applications are characterized as ''affirmative'' or ''defensive'' based on which agency has jurisdiction over the alien's case. Generally, if an alien is physically present in the United States, not detained, and has not been placed in removal proceedings, the alien files the asylum application with USCIS. These applications are known as ''affirmative'' filings. If DHS places an alien in removal proceedings, the alien files an application for asylum with an Immigration Judge (IJ).[178] These applications are known as ''defensive'' filings and include aliens the USCIS asylum officer refers to the IJ for *de novo* review of their asylum claim.[179]

USCIS is responsible for initial adjudication of asylum applications filed by UACs. This is because an asylum application filed by a UAC must be processed according to requirements established in the TVPRA, Public Law 110–457, 122 Stat. 5044, and the settlement agreement in *J.O.P.* v. *U.S. Dept of Homeland Security,* 8:19–cv–01944 (D. Md.) (approved Nov. 25, 2024) (J.O.P. Settlement Agreement). The provisions of the TVPRA that apply to UACs took effect on March 23, 2009 and provide USCIS with initial jurisdiction over all asylum applications filed by UACs. Thus, even UACs who have been issued a Notice to Appear in immigration court can have their application for asylum heard by USCIS if they were UACs on the date they first filed for asylum. The TVPRA also provides an opportunity for UACs, who did not previously file for asylum with USCIS and who had a pending claim in immigration court, on appeal to the Board of Immigration Appeals, or in federal court, to have their asylum claim heard and adjudicated by a USCIS Asylum Officer in a non-adversarial setting.[180] Furthermore, under the terms of the J.O.P. Settlement Agreement, USCIS will not rely on any determination by DOJ that an alien is not a UAC.[181] Rather, USCIS exercises initial jurisdiction over the adjudication of the UAC's asylum application and renders its own jurisdictional determination.[182] Therefore, if a UAC's

[170] INA sec. 208(b)(2)(A), 8 U.S.C. 1158(b)(2)(A).

[171] INA sec. 208(a)(2), 8 U.S.C. 1158(a)(2).

[172] INA sec. 208(a)(2)(B), 8 U.S.C. 1158(a)(2)(B). The 1-year filing deadline does not apply to an alien who is a UAC, as defined in 6 U.S.C. 279(g). INA sec. 208(a)(2)(E), 8 U.S.C. 1158(a)(2)(E).

[173] INA sec. 208(a)(2)(D), 8 U.S.C. 1158(a)(2)(D).

[174] *See* INA secs. 208(b)(1) and 240(c)(4)(A)(ii); 8 U.S.C. 1158(b)(1) and 1229a(c)(4)(A)(ii).

[175] INA sec. 208(c)(1), 8 U.S.C. 1158(c)(1).

[176] INA sec. 208(c)(2), 8 U.S.C. 1158(c)(2).

[177] INA sec. 208(b)(3). *See also* USCIS, ''Asylum,'' *https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum* (last updated Jan. 24, 2025).

[178] Where an asylum application is filed by a UAC, USCIS has initial jurisdiction over that application, even if the alien is in removal proceedings. INA sec. 208(b)(3)(C), 8 U.S.C. 1158(b)(3)(C); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Public Law 110–457, sec. 235(d)(7), 122 Stat. 5044, 5081.

[179] *See* 8 CFR 208.14(c).

[180] William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Public Law 110–457 (Section 235 (d)(7)).

[181] *J.O.P.* v. *U.S. Dept of Homeland Security,* 8:19–cv–01944, Part III.D. (D. Md.) (approved Nov. 25, 2024), *https://www.ice.gov/doclib/legalNotice/jopSettlementAgreement.pdf.*

[182] *J.O.P.* v. *U.S. Dept of Homeland Security,* 8:19–cv–01944, Part III.C.1. (D. Md.) (approved

pending asylum application remains pending before USCIS, his or her (c)(8) EAD will not automatically terminate even if his or her asylum application was denied by an IJ, BIA, or a Federal court.

Aliens who present themselves at a U.S. port of entry (air, sea, or land) are generally deemed applicants for admission.[183] INA sec. 235(a)(1), 8 U.S.C. 1225(a)(1). If an immigration officer determines that an alien is inadmissible under section 212(a)(6)(C) or 212(a)(7) of the Act, 8 U.S.C. 1182(a)(6)(C) or 1182(a)(7), for being in possession of false documents, making false statements, or lacking the required travel documentation, the alien may be placed in expedited removal proceedings under section 235(b)(1) of the Act, 8 U.S.C. 1225(b)(1). Expedited removal may also be applied to certain other aliens who have not been admitted or paroled into the United States and who cannot show that they have been continuously physically present in the United States for the two years prior to the date of determination of inadmissibility. INA sec. 235(b)(1)(A)(iii), 8 U.S.C. 1225(b)(1)(A)(iii). Aliens in expedited removal proceedings who indicate an intention to apply for asylum, express a fear of persecution or torture, or a fear of return to their home country are referred to an asylum officer to determine whether the alien has a credible fear of persecution or torture.[184] INA sec. 235(b)(1), 8 U.S.C. 1225(b)(1); 8 CFR 208.30(b); 8 CFR 235.3(b)(4). If an alien is determined to have a credible fear, ''the alien shall be detained for further consideration of the application for asylum.'' INA sec. 235(b)(1)(B)(ii), 8 U.S.C. 1225(b)(1)(B)(ii).

Asylum applications based initially on a positive credible fear determination are under the jurisdiction of EOIR once a Notice to Appear (NTA) is filed with the court and are considered ''defensively filed'' applications. Similarly, if an alien has a positive credible fear determination, but is released from detention by U.S. Immigration and Customs Enforcement (ICE), the alien is still considered to be under EOIR jurisdiction once the NTA is filed and must file the application for asylum with the court.

3. Employment Authorization for Asylum Applicants

An alien may be authorized for employment in the United States based on the alien's immigration status or other conditions, as established by statute or by regulation. *See* 8 CFR 274a.12. An asylum applicant is not entitled to employment authorization by statute, but Congress granted the Secretary discretion to authorize employment, through regulations, for these aliens while the asylum application is pending adjudication. *See* INA sec. 208(d)(2), 8 U.S.C. 1158(d)(2). Aliens seeking employment authorization generally must apply for an EAD by filing Form I–765 with USCIS in accordance with the form instructions, along with any prescribed fee. 8 CFR 274a.13(a). The regulations at 8 CFR 208.7 and 274a.12(c)(8) govern employment authorization for asylum applicants.

a. 180-Day Asylum EAD Clock

Under the current statute and regulations, the Secretary cannot grant employment authorization to an asylum applicant until 180 days after the filing of the asylum application. INA sec. 208(d)(2), 8 U.S.C. 1158(d)(2), 8 CFR 208.7(a)(1). This 180-day period is commonly called the ''180-day Asylum EAD Clock.'' [185] The 180-day Asylum EAD Clock begins to run after USCIS or EOIR, as applicable, accepts the asylum application for processing. 8 CFR 208.7(a)(1). Existing regulations provide that USCIS or EOIR should return an incomplete application to the alien within 30 days of receipt of the application, but if USCIS or EOIR has not returned the incomplete asylum application within that time, the application is automatically deemed complete. 8 CFR 208.3(c), 1208.3(c)(3) (as effective).[186] Once the asylum application is accepted, the alien must wait 150 days before they may file the application for employment authorization. 8 CFR 208.7(a)(1). USCIS has 30 days from the filing date of the EAD application to adjudicate the application. *Id.* The 180-day Asylum EAD Clock therefore includes the 150-day waiting period for filing the (c)(8) EAD application and the additional 30-day period that USCIS has to adjudicate the EAD application.

Delays requested or caused by the alien stop the 180-day Asylum EAD Clock, and it does not run again until the alien cures the delay or until the next scheduled case event, such as a rescheduled interview or a continued hearing. 8 CFR 208.7(a)(2). For example, if an alien fails to appear for a required biometrics appointment on their asylum application, the 180-day Asylum EAD Clock will stop and not recommence until the alien appears for his or her biometrics appointment. *Id.* Similarly, if an alien asks to amend or supplement his or her asylum application, fails to provide a competent interpreter at the asylum interview, or reschedules the asylum interview for a later date, all of these actions will stop the 180-day Asylum EAD Clock, and the clock will not restart until the required action is completed.[187] 8 CFR 208.7(a)(2). USCIS will deny an EAD application if the asylum application is still subject to an unresolved alien-caused delay that prevents the alien from accumulating 180 days at the time USCIS adjudicates the initial (c)(8) EAD application.[188] As a result, some asylum applicants may wait longer than 180 days before they can be granted employment authorization.

b. 30-Day Processing Timeframe

Under current regulations at 8 CFR 208.7(a)(1), USCIS must adjudicate initial employment authorization applications under the (c)(8) category within 30 days of when the alien files the Form I–765.[189] The 30-day

Nov. 25, 2024), *https://www.ice.gov/doclib/legalNotice/jopSettlementAgreement.pdf.*

[183] INA sec. 101(a)(13)(C), 8 U.S.C. 1101(a)(13)(C), provides separate exceptions for when a lawful permanent resident will be considered an alien for admission (*e.g.,* abandoned residence, continuous absence of 180 days, illegal activity after departure from the United States).

[184] Except for certain aliens who entered on or after January 20, 2025, who are restricted from invoking provisions of the INA that permit their continued presence in the United States, including but not limited to section 208 of the INA, 8 U.S.C. 1158.

[185] USCIS, ''The 180-Day Asylum EAD Clock Notice,'' *https://www.uscis.gov/sites/default/files/document/notices/Applicant-Caused-Delays-in-Adjudications-of-Asylum-Applications-and-Impact-on-Employment-Authorization.pdf* (last updated Mar. 2025).

[186] Paragraph (c)(3) of 8 CFR 1208.3 was amended by the rule Procedures for Asylum and Withholding of Removal, 85 FR 81698 (Dec. 16, 2020), which was preliminarily enjoined and had its effective date stayed. *See Nat'l Immigrant Justice Ctr.* v. *Exec. Office for Immigration Review,* No. 21–56 (RBW) (D.D.C. Jan. 14, 2021). Thus, the currently operative version is the version in effect on January 1, 2021, before the rule took effect. EOIR subsequently amended paragraph (c)(3) in a rule that remains operative—Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers, 87 FR 18078 (Mar. 29, 2022)—but that amendment does not change the paragraph's meaning.

[187] *See* ''The 180-Day Asylum EAD Clock Notice'' for additional examples of actions that can affect the 180-day Asylum EAD Clock.

[188] *See,* USCIS, ''The 180-Day Asylum EAD Clock Notice,'' *https://www.uscis.gov/sites/default/files/document/notices/Applicant-Caused-Delays-in-Adjudications-of-Asylum-Applications-and-Impact-on-Employment-Authorization.pdf* (last updated Mar. 2025).

[189] The regulations at 8 CFR 208.7(a)(1) currently provide that if the asylum application is not denied, USCIS will have 30 days from the date of filing of the request for employment authorization to grant or deny the employment authorization request.

Continued

processing timeframe in 8 CFR 208.7(a)(1) was established more than 25 years ago, when the former INS adjudicated EAD applications at local INS offices, but EAD applications are now adjudicated at USCIS Service Centers. As a result of numerous factors, including a massive growth in EAD application volume, the need for ASC appointment scheduling,[190] the identification of more national security and public safety concerns, and an increase in the level and complexity of fraud concerns, USCIS was unable to match the pace of adjudications to the volume of receipts. As result, on May 22, 2015, plaintiffs in *Rosario* v. *USCIS,* No. C15–0813JLR (W.D. Wash.), brought a class action in the U.S. District Court for the Western District of Washington to compel USCIS to comply with the 30-day processing timeframe of 8 CFR 208.7(a)(1).[191] On July 26, 2018, the court enjoined USCIS from further failing to adhere to the 30-day processing timeframe for adjudicating EAD applications. As of March 2025, USCIS completed 86.4 percent of initial (c)(8) EAD applications within 30 days and completed 98.3 percent of initial (c)(8) applications within 60 days. However, compliance with the court order places significant strain on already limited agency resources, especially considering that initial (c)(8) EAD applications (except those filed under the special ABC procedures) are free of cost, and USCIS will not be able to continue to sustain this burden in the long-term without adding additional agency resources or negatively impacting processing times for other applications, petitions, and benefit requests, including other EAD categories. Full-time equivalent officer hours allocated to initial (c)(8) EAD applications have increased from approximately 50 to a high-water mark of over 800 in March of 2025 in order to keep pace with the drastic increase in initial (c)(8) EAD application receipts. Given that there was previously no fee for initial (c)(8) EAD applications (except those filed under the special ABC procedures), the costs of intake, adjudication, and customer service and other support functions were historically borne by other benefit requestors who pay fees.

c. Impact of Denial of the Asylum Application on Employment Authorization

Denial of the asylum application impacts the alien's ability to apply for and retain employment authorization in different ways, depending on when and where the denial occurred.

If the asylum application is denied by an asylum officer or IJ within the 150-day waiting period after applying for asylum, the alien may not apply for employment authorization. 8 CFR 208.7(a)(1). If the application for employment authorization is filed after the 150-day waiting period and the asylum application is denied prior to adjudication of the application for employment authorization, employment authorization will be denied. *Id.*

If the alien applies for and is granted an EAD based on a pending affirmative asylum application and the asylum application is denied by the asylum officer, the EAD will either terminate on its expiration date or 60 days after the denial of the asylum application, whichever is later. 8 CFR 208.7(b)(1). If the alien receives an EAD and the asylum application is later referred by USCIS to EOIR, employment authorization will remain valid through the expiration date on the EAD. 8 CFR 208.7(b)(2).

If the IJ, BIA, or Federal court denies the asylum application and the alien does not file the appropriate request for administrative or judicial review, employment authorization will expire on the date printed on the EAD. 8 CFR 208.7(b)(2). If the IJ, BIA, or Federal court denies the asylum application and the alien chooses to file the appropriate request for administrative or judicial review, employment authorization will remain valid through the EAD expiration date, and the alien will be eligible to file for a renewal EAD upon its expiration. 8 CFR 208.7(c).

IV. Related Rulemaking

Simultaneously with this rule, DHS is engaging in other rulemaking actions that are in various stages of development. DHS has considered and analyzed these other rules for peripheral, overlapping, or interrelated effects on this rule and has incorporated their effects, if any, into the supporting documentation, policies, and regulatory text for this proposed rule.

A. Discretionary EAD NPRM

In a separate notice of proposed rulemaking (NPRM), DHS is will propose amendments to regulations governing discretionary employment authorization for certain aliens who: have final orders of removal, but are temporarily released from custody on orders of supervision (OSUP); are paroled into the United States temporarily for urgent humanitarian reasons or significant public benefit; or have been granted deferred action. DHS proposes to limit and clarify eligibility to apply for these categories of discretionary employment authorization. DHS further proposes to specify that aliens applying for discretionary employment authorization: (1) who admit committing a violent or dangerous crime even if he or she has never been formally arrested, charged, indicted, or convicted; (2) who have been arrested for, charged with (without disposition), indicted for, or convicted of any criminal acts; or (3) for whom there is evidence of the alien's membership in a gang or terrorist organization, generally do not warrant a favorable exercise of discretion unless there are significant countervailing public interests. DHS notes that this proposed rule will be listed in the publicly available Fall 2025 Unified Agenda of Federal Regulatory and Deregulatory Actions.

DHS considered the possible combined effects of this Asylum EAD Reform NPRM and the Discretionary EAD NPRM. As some of the proposed amendments made in the Asylum EAD Reform NPRM and the Discretionary EAD NPRM generally overlap, the combined effects are generally mitigated by the inclusion of similar amendments between the two proposed rules. While the Asylum EAD Reform NPRM does intersect with the Discretionary EAD NPRM, DHS is using current regulatory text as the basis for changes, as any changes proposed by the Asylum EAD Reform NPRM at this point in the process are just that—proposed. Further, while the Discretionary EAD NPRM will include changes related to all employment authorization under 8 CFR 274a.12(c), it will not include any changes to 8 CFR 274a.12(c)(8). This will allow the Asylum EAD Reform NPRM to fully address (c)(8) issues, and the Asylum EAD Reform NPRM will not make changes to categories addressed in the Discretionary EAD NPRM. DHS acknowledges that, if the Discretionary EAD Final Rule goes into effect prior to the Asylum EAD Reform NPRM, it may

Certain events may suspend or restart the 30-day adjudication period. For instance, the time between the issuance of a request for evidence and the receipt of the response, or a delay requested or caused by the alien, is not counted as part of the 30-day period. 8 CFR 208.7(a)(2).

[190] At the time the INS published the current 30-day Asylum EAD clock regulation, Application Support Centers (ASCs) did not exist. All adjudications were essentially 30–45 days quicker prior to the statutory creation of the ASCs. See Section III.C., above.

[191] The court in *Rosario* also sought to compel USCIS to comply with the 90-day rule for (c)(8) renewals based on the EAD adjudicative timeframe in 8 CFR 274a.13(d). USCIS' failure to comply with either the 30-day timeframe for initial (c)(8) EAD applications or the 90-day timeframe for (c)(8) renewals meant USCIS should have issued interim employment authorization under (then current) 8 CFR 274a.13(d) (2015).

be necessary to amend the appropriate regulatory text to reflect the corresponding changes in the Discretionary EAD Final Rule.

B. Biometrics NPRM

In another separate rulemaking, DHS is proposing to amend DHS regulations governing the use and collection of biometrics by DHS. DHS will propose, among other things, updates to the regulatory definition of biometrics to ensure it captures accepted modalities and to expand the population of individuals required to submit biometrics. As relevant to this Asylum EAD Reform NPRM, which would establish a general biometrics requirement for asylum applicants seeking a (c)(8) EAD, the Biometrics NPRM will propose to require biometrics from all individuals filing for, or associated with, an immigration or naturalization benefit request, other request, or collection of information, unless DHS exempts the requirement DHS is proposing these changes to enhance accurate identity verification and management throughout the immigration lifecycle. The proposed changes would also enhance DHS's ability to identify and deter immigration benefits fraud, and allow DHS to perform more comprehensive biometrics-based background checks in connection with immigration benefits requests. Aliens who submit biometrics would face costs associated with time and travel. These are detailed in the economic analysis, but DHS does not estimate the total monetized impact. DHS notes that this proposed rule will be listed in the publicly available Fall 2025 Unified Agenda of Federal Regulatory and Deregulatory Actions.

DHS considered the possible combined effects of Asylum EAD Reform NPRM and the Biometrics NPRM. As at least one of the amendments made in the Asylum EAD Reform NPRM and the Biometrics NPRM generally overlap, the combined effects are generally mitigated by the inclusion of a similar amendment between the two proposed rules. Specifically, DHS is proposing to require biometrics for all (c)(8) EAD applicants in both the Asylum EAD NPRM and the Biometrics NPRM.

V. Discussion of Proposed Rule

A. Pause and Re-Start of (c)(8) EAD Application Acceptance

The IIRIRA amended the Act to state that any asylum procedures established under section 208(d)(1) of the Act, 8 U.S.C. 1158(d)(1), ''shall provide that . . . , in the absence of exceptional circumstances, final administrative adjudication of [an] asylum application . . . shall be completed within 180 days after the date an application is filed.''[192] In 1996, Congress decided to pursue completion of first-instance asylum application decisions within 180 days of filing. Both Congress and the administration at that time provided significant resources to accomplish that processing goal.[193] After the statutory and regulatory changes of 1994 and 1996, new asylum filings decreased from their peak of 154,464 in FY 1995 to 32,711 in FY 1999.[194] As a result of both the reforms and the increase in resources, the asylum system moved closer to accomplishing both protection and benefit integrity, and closer to aligning with the original intent behind the asylum process as a whole.[195] The intent has always been that once an asylum claim is filed, a decision is made in a timely manner so that there is no need for an employment authorization document until the alien has received a decision on the asylum application.

Yet again, DHS again finds the asylum system to be under-resourced and overwhelmed with asylum applications, and consequently an easy target for many driven by the opportunity to receive employment authorization by filing a frivolous, fraudulent, or otherwise meritless asylum application.[196] In recent years, USCIS has been overwhelmed by both affirmative asylum receipts and credible fear screenings, leading to an increase in the backlog. In 2022, USCIS received 247,790 affirmative asylum receipts, and in 2023 received 464,398 affirmative asylum receipts, nearly double the 2022 receipts.[197] Over recent years, the credible fear caseload has also significantly increased, going from a low of 5,216 cases in 2009 to 103,295 cases in 2019.[198] In 2022, USCIS completed 54,092 credible fear cases.[199] In 2023, that number almost tripled to 150,431 credible fear receipts.[200] In 2023, with the expiration of Title 42, USCIS allocated more than 90% of its asylum officers to process an expected surge of credible fear cases.[201] This left only about 3 percent of asylum officers to adjudicate affirmative asylum cases, thus allowing the backlog to continue to

[192] IIRIRA sec. 604(a), Public Law 104–208 (codified at INA sec. 208(d)(5)(A)(iii), 8 U.S.C. 1158(d)(5)(A)(iii)). IIRIRA also modified the asylum statute to provide ''[n]othing in [8 U.S.C. 1158(d)] shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.'' INA sec. 208(d)(7), 8 U.S.C. 1158(d)(7). Courts accordingly have acknowledged the ''exceptional circumstances'' carve-outs to the timing provisions of INA sec. 208(d)(5)(A), 8 U.S.C. 1158(d)(5)(A), and this no-private-right-of-action provision render those timing provisions non-mandatory. *See, e.g., Zhuo* v. *Mayorkas,* No. 23–cv–5416, 2024 WL 4309232 at *4 (E.D.N.Y. Sept. 26, 2024) (''The qualifying phrase 'absen[t] exceptional circumstances' suggests that Congress intended that the timeline not apply while the USCIS is dealing with an exceptional level of aliens,'' and ''the bar to a private right of action set forth in § 1158(d)(7) . . . supplies additional evidence of Congress' intent that the timeline is not mandatory.'').

[193] David A. Martin, ''The Need for Balance,'' Proceedings of the Annual Meeting, American Society of International Law, Vol. 98 (2004), pp. 252–55; S. Rept. 104–249 (1996) (describing increased property and personnel to address the asylum backlog).

[194] Part of the reason for the high numbers in FY 1995 was the *ABC Settlement,* which required certain aliens to file by deadlines in 1995 and 1996. USCIS, ''*American Baptist Churches* v. *Thornburgh (ABC) Settlement Agreement,*'' *https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/american-baptist-churches-v-thornburgh-abc-settlement-agreement* (last updated Sept. 3, 2009); INS, DOJ, ''1995 Statistical Yearbook of the Immigration and Naturalization Service'' (Mar. 1997), p. 84; INS, DOJ, ''1999 Statistical Yearbook of the Immigration and Naturalization Service'' (Mar. 2002), p. 86.

[195] David A. Martin, ''The Need for Balance,'' Proceedings of the Annual Meeting, American Society of International Law, Vol. 98 (2004), pp. 252–55.

[196] As described previously, after the statutory and regulatory changes of 1994 and 1996, new asylum filings decreased by approximately 80 percent from FY 1995 to FY 1999, and the approval rate for asylum filings significantly increased. Ruth Ellen Wasem, Congressional Research Service, ''Asylum and 'Credible Fear' Issues in U.S. Immigration Policy'' (June 29, 2011), *https://www.congress.gov/crs-product/R41753;* INS, DHS, ''Asylum Reform: Five Years Later'' (Feb. 1, 2000), *https://www.uscis.gov/sites/default/files/document/news/Asylum.pdf.* In FY 2024, USCIS received more than 419,000 applications for affirmative asylum, and completed more than 126,000 affirmative asylum applications; USCIS, ''All USCIS Application Petition Form Types (Fiscal Year 2024, Quarter 4)'' (Dec. 18, 2024), *https://www.uscis.gov/sites/default/files/document/data/quarterly_all_forms_fy2024_q4.xlsx.*

[197] USCIS OPQ Data, ''By Fiscal Year, Data Type, and Deny/Referral Reasons'' (May 22, 2025).

[198] USCIS, Credible Fear Cases Completed and Referrals for Credible Fear (Nov. 17, 2023), available at *https://ohss.dhs.gov/sites/default/files/2023-12/2023_0818_plcy_credible_fear_fy2022.xlsx* (last accessed May 27, 2025).

[199] USCIS, Credible Fear Cases Completed and Referrals for Credible Fear (Nov. 17, 2023), available at *https://ohss.dhs.gov/sites/default/files/2023-12/2023_0818_plcy_credible_fear_fy2022.xlsx* (last accessed May 27, 2025).

[200] USCIS, Congressional Semi-Monthly Report—Jan. 1, 2022 to Jan. 15, 2023 (Jan. 30, 2023), available at: *https://www.uscis.gov/sites/default/files/document/data/Congressional_Semi-Monthly_Credible_and%20Reasonable_Fear_Report%20-%20Jan%201%202022%20to%20Jan%2015%202023.xlsx* (last accessed May 27, 2025); USCIS, Congressional Semi-Monthly Report—December 16, 2022–December 31, 2023 (Jan. 5, 2024), available at: *https://www.uscis.gov/sites/default/files/document/data/Congressional_Semi-Monthly_CF%26RF_Report_12_16_22_to_12_31_23.xlsx* (last accessed May 27, 2025).

[201] OIG, USCIS Faces Challenges Meeting Statutory Timelines and Reducing Its Backlog of Affirmative Asylum Cases (July 3, 2024), available at: *https://www.oig.dhs.gov/sites/default/files/assets/2024-07/OIG-24-36-Jul24.pdf.*

grow.[202] Similar to the affirmative asylum program, EOIR also more than tripled their asylum application receipts, going from 265,632 in FY 2022 to 905,632 in FY 2024.[203] While the average processing time for an affirmative asylum case completed in FY 2024 was 1,287 days, it is important to note this includes the universe of affirmative asylum cases, including backlog, LIFO, and any case prioritized for adjudication, such as Afghan Operation Allies Welcome (OAW),[204] mandamus, and expedited cases. In FY 2025 Q1, new affirmative asylum applicants could expect processing to take 765.75 months, or more than 63 years; and for new filers in FY 2025 Q2, USCIS expects processing to take approximately 562.25 months, or more than 46 years.[205] DHS believes the current volume and processing times of asylum applications reflects similar dynamics as the pre-reform filings, and the effect of the prior reform supports the deduction that there are many frivolous, fraudulent, or otherwise meritless asylum application filings that are filed solely for the purposes of obtaining an EAD. The asylum system is again in need of a reform that decouples employment authorization from the filing of an asylum application. However, the situation has now turned catastrophic and requires novel solutions that meet the severity of the problem.

If finalized, DHS would pause the acceptance of initial (c)(8) EAD applications when the average processing time [206] for affirmative asylum applications over a consecutive period of 90 days adjudication exceeds 180 days.[207] Acceptance of initial (c)(8) EAD applications would resume when the average processing time for affirmative asylum adjudications over a consecutive period of 90 days is less than or equal to 180 days. The USCIS Director's determination to pause or restart acceptance of (c)(8) EAD applications is not discretionary, and that determination would be directly tethered to the processing times of all affirmative asylum applications over the previous 90-day period. DHS acknowledges that the pausing of acceptance of initial (c)(8) EAD applications will create a potentially significant hardship for asylum applicants. Depending on asylum receipts moving forward, which will likely decrease if this rule is finalized as proposed but will also continue to be subject to change due to a variety of other factors, the initial pause may last a significant amount of time. The pause on EAD application acceptances and processing may last from 14 to 173 years, or longer. For example, without factoring in any of the other proposed changes in this rule and how they would impact adjudications, if receipts decrease by 80 percent, as they did following the 1994 regulatory reforms, it could take USCIS as long as 14 years to reach a 180-day processing time.[208] If, instead, receipts decrease by 50 percent, it could take USCIS as long as 173 years to reach a 180-day processing time. It bears repeating that neither of those projections take into account any of the other proposed changes in this rule which, if finalized, would also shorten those processing times.[209] USCIS recognizes that the effect of this pause would be to restrict access to pending asylum application-based employment authorization for new applicants for an extended period, with the duration of the pause determined by the future decrease in asylum application receipts. While this is a significant change in access to pending asylum application-based employment authorization, DHS believes it is necessary to exercise its statutory discretion to implement these changes to achieve its goals of enhancing benefit integrity, protecting national security, and reducing resource strains.

As discussed in several places earlier in this rule, DHS is confronted with a similar situation to the INS in the early 1990s. The INS responded with certain regulatory reforms that succeeded in curtailing meritless claims and delivering fair and timely decisions on asylum cases.[210] In the wake of those asylum reforms, new asylum filings actually decreased from their then-peak of 149,566 in FY 1995 to just 30,261 in FY 1999, a decrease of nearly 80 percent in only five FYs.[211] At the same time, the approval rate significantly increased, from 15 percent of cases adjudicated in FY 1993 to 38 percent in FY 1999.[212] Consequently, INS's reforms met the stated goals of that rulemaking, preventing aliens from applying for asylum primarily as a means to obtain employment authorization, while simultaneously enabling the INS to more promptly grant asylum—and provide work authorization—to those who merit this relief''.[213] Because the proposals in this rulemaking are designed to have a similar effect to those reforms implemented by the INS in 1994, DHS expects this rulemaking will eventually achieve similar results to those achieved by the INS.

As detailed above, DHS is primarily attempting to resolve the issues surrounding the asylum backlog but is having difficulty even reaching those

[202] OIG, USCIS Faces Challenges Meeting Statutory Timelines and Reducing Its Backlog of Affirmative Asylum Cases (July 3, 2024), available at: *https://www.oig.dhs.gov/sites/default/files/assets/2024-07/OIG-24-36-Jul24.pdf.*

[203] EOIR, *Adjudication Statistics: Total Asylum Applications* (July 31, 2025), *https://www.justice.gov/eoir/media/1344871/dl?inline.*

[204] OAW was an interagency coordinated effort to establish pathways for parole and other forms of protection for Afghans seeking to resettle in the United States. *See* USCIS, ''Operation Allies Welcome'' (last visited June 9, 2025), *https://www.dhs.gov/archive/operation-allies-welcome.*

[205] To calculate this, USCIS used ''cycle time'', which is how many months' worth of receipts represents the current pending volume. It is a metric that can be used for projections because it takes into account current pending volume, anticipated receipts, and expected completions.

[206] USCIS has historically defined ''processing time'' as the time it took USCIS to complete 80% of the adjudicated cases over the last six months. USCIS, *Case Processing Times* (last visited Aug. 27, 2025), *https://egov.uscis.gov/processing-times/more-info.* However, USCIS recognizes that this definition does not provide insight into the full scope of the pending affirmative asylum application caseload due to the use of LIFO processing. For example, if USCIS only completed cases using LIFO processing over the six months from January 1, 2026, through June 30, 2026, the oldest cases would continue to remain pending for an ever-growing period. In the future, when USCIS adjudicates those older cases, their processing times would be even longer than those adjudicated in the first six months of 2026. Accordingly, if USCIS finalizes this rule as proposed, USCIS plans to calculate a modified processing time that includes the full pending affirmative asylum caseload in order to most accurately depict asylum application processing times and account for older pending cases. USCIS requests comments, however, on any other ways that USCIS could modify the ''processing time'' metric in this context to account for older pending cases and the amount of time they will ultimately have required for adjudication.

[207] USCIS would, however, continue to process pending applications received prior to the pause.

[208] ''Cycle time'' is how many months' worth of receipts represents the current pending volume. It is a metric that can be used for projections because it takes into account current pending volume, anticipated receipts, and expected completions.

[209] ''Processing time'' is the time from receipt to completion for each individual form and can be averaged over a specific period of time in the past, but does not take into account currently pending applications and cannot be used for projections.

[210] Rules and Procedures for Adjudication of Applications for Asylum or Withholding of Deportation and for Employment Authorization, 59 FR 14779 (Mar. 30, 1994); Rules and Procedures for Adjudication of Applications for Asylum or Withholding of Deportation and for Employment Authorization, 59 FR 62284 (Dec. 5, 1994).

[211] Ruth Ellen Wasem, Congressional Research Service, ''Asylum and 'Credible Fear' Issues in U.S. Immigration Policy'' (June 29, 2011), *https://www.congress.gov/crs-product/R41753;* INS, DOJ ''Asylum Reform: Five Years Later'' (Feb. 1, 2000), *https://www.uscis.gov/sites/default/files/document/news/Asylum.pdf.*

[212] INS, DOJ ''1999 Statistical Yearbook of the Immigration and Naturalization Service'' (Mar. 2002), p. 100. Percent approved is '[t]he number of cases granted divided by the sum of: cases granted; denied; and referred to an Immigration Judge following an interview.''

[213] *See* 59 FR 62284, 62290–62291 (Dec. 5, 1994).

cases due to many operational concerns and competing adjudications priorities. DHS can circumstantially establish that these proposed reforms would help DHS achieve its stated goals—which are the same as the INS's goals in 1994. For purposes of a hypothetical, assuming DHS publishes a final rule aligned with the proposed rule here and achieves similar results to what the INS achieved in 1994—a nearly 80 percent reduction in asylum applications in only five FYs—DHS could then reallocate asylum resources and more successfully tackle the looming backlog. DHS could also move its EAD adjudicatory resources to support timely adjudication of initial (c)(8) EAD applications as well as other EAD application categories, which in turn reduces processing times for EAD applications across the board. Once (c)(8) EAD receipts decrease, USCIS could comfortably surge resources to the Asylum Division for adjudications support functions (with appropriate cross training) or clerical and administrative functions, both of which have simply not been possible with the current state of operations necessary to maintain *Rosario* compliance.

For example, in FY2024, the last full year of data available, DHS received 422,457 asylum applications.[214] Assuming for a moment DHS can replicate INS's results with this rule, achieving an 80% reduction in asylum filings, then DHS new asylum filings would drop closer to 84,491 (20% of 422,457). At the same time, using staffing levels from FY2024, DHS approved 17,175, administratively closed 107,007, and denied or referred 5,709—for a total of 129,891 final decisions and administrative closures on pending asylum applications.[215] If all other variables remained constant and the impacts of this rulemaking yielded a similar result as the INS's 1994 rulemaking, then at FY2024 staffing levels DHS would be adjudicating 153% of the projected new asylum filing receipt volumes.

Looking at FY2025 data (through May 22, 2025) as another example, an even better result is reached. DHS received 331,883 asylum applications this year (YTD).[216] Again, assuming for a moment DHS can replicate INS's past results with this current rule, achieving an 80% reduction in asylum filings, then DHS new asylum filings would drop closer to 66,376 (20% of 331,883). At current staffing levels, in FY2025 DHS approved 8,667, administratively closed 159,530, and denied or referred 11,872—for a total of 180,069 final decisions on pending asylum applications.[217] Looking at partial FY2025 data, if all other variables remained constant and the impacts of this rulemaking yielded a similar result as the INS's 1994 rulemaking, then at current staffing DHS would be adjudicating 240% of the projected new asylum filing receipt volumes.

DHS notes that certain variables would not remain constant with this hypothetical. Notably, as both new asylum filing receipt and asylum backlog volumes decline, initial and renewal (c)(8) EADs filings organically would decline as well. As asylum filing receipts decrease as a result of the proposed regulatory changes, asylum officer resources will be able to devote more time to the USCIS asylum application backlog. At the same time, the reduction in (c)(8) EAD filings will allow USCIS to more efficiently allocate EAD adjudications staff across other EAD filing categories in an effort to reduce overall processing times across the board. DHS also notes that the then-peak of new asylum filings in FY1995 (149,566) has been surpassed in all four of the last FYs (FY2022 247,790; FY2023 464,398; FY2024 422,457; and FY2025 331,883 (through May 22, 2025)),[218] so while the assumptions in this hypothetical are feasible, the sheer volume of new asylum filings may slow the rate at which the INS's results are reached by DHS (*e.g.,* it may take 8 or 10 years instead of 5). However, DHS is confident that if these proposed changes are finalized, DHS will achieve a result similar to the INS after its 1994 regulatory reforms.

Based on the data supporting this rule and the justification described here, DHS proposes to codify in regulation that it will pause acceptance of initial (c)(8) EAD applications from asylum applicants when the processing times of adjudications of affirmative asylum applications exceeds 180 days for a period of 90 consecutive days, until the USCIS processing time for adjudicating affirmative asylum applications is less than or equal to 180 days for a period of 90 consecutive days.[219] After USCIS has resumed accepting initial employment authorization applications from asylum applicants, if the average processing times of adjudications of affirmative asylum applications again exceeds 180 days for a period of 90 consecutive days, USCIS would again pause the acceptance of (c)(8) EAD applications. The determinations as to whether initial employment authorization applications for asylum applicants are accepted or not would be made by the Director of USCIS, based on the USCIS processing times only and not subject to discretion. The agency would announce on the USCIS website when it will accept and when it pauses acceptance of initial (c)(8) EAD applications. The announcement would also be accompanied by the publication of the processing times, which support the determination made by the Director of USCIS. DHS believes that a website update is the most expeditious and accessible mode of notifying the public of its operational posture. DHS also believes that a critical part of this process will be to provide the processing times, which form the basis for the determinations made by the Director of USCIS. Therefore, DHS proposes to publish the quarterly processing times. It should be highlighted that any pause of initial employment authorization applications from asylum applicants would not apply to any renewal (c)(8) EAD applications, which would continue to be accepted and adjudicated by USCIS in the event the processing time of adjudications of affirmative asylum applications exceeds 180 days for a period of 90 consecutive days. DHS decided on a 90-day evaluation period, as it correlates with the current compilation of processing times and other statistics performed on a quarterly basis by DHS experts.

In addition, as a result of this change and the 365-day waiting period described later in this document, moving forward, fewer asylum applicants will receive employment authorization while their applications are pending. Only aliens whose asylum applications are pending beyond 365 days while the average asylum application processing time remains at or below 180 days will be eligible to file for an initial (c)(8). EAD. Just as the INS did in 1994, DHS has dutifully balanced this hardship against the need for a functioning asylum system and the need to deter aliens filing frivolous, fraudulent, or otherwise meritless claims solely motivated by the opportunity to obtain an employment authorization document. DHS believes that the asylum system is currently over-burdened and overwhelmed by asylum applications, including the frivolous, fraudulent, or otherwise by

[214] USCIS OPQ DATA, ''By Fiscal Year, Data Type, and Deny/Referral Reasons'' (May 22, 2025).

[215] *Id.*

[216] *Id.*

[217] *Id.*

[218] *Id.*

[219] USCIS calculates processing times by determining how long it took to complete 80 percent of adjudicated cases over the last six months. *See more* USCIS, ''Case Processing Times,'' *https://egov.uscis.gov/processing-times/more-info* (last visited May 26, 2025).

meritless asylum applications filed by aliens who are seeking to obtain employment authorization. DHS understands that asylum applicants may be fleeing past persecution or may have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA sec. 208(b)(1), 8 U.S.C. 1158(b)(1). However, there is nothing in the statute that requires an EAD for aliens applying for asylum, rather this is a purely discretionary EAD category. The intention behind the asylum system is to provide a timely response to an asylum claim. Thereafter, the aim is to provide employment authorizations to aliens ultimately eligible for asylum, not guarantee employment authorization to all aliens who seek asylum, but may ultimately not be eligible. By pausing the acceptance of initial employment authorization applications, which has now exceeded 150,000 applications per month,[220] aliens will have less incentive to file frivolous, fraudulent, or otherwise meritless asylum applications for the purposes of obtaining employment authorization, and DHS expects that asylum filings will therefore decrease, as they did in the years following IIRIRA reform. With a decline in frivolous, fraudulent, or otherwise meritless asylum applications USCIS would have greater bandwidth to focus adjudicative efforts on the existing asylum backlog by reallocating more available asylum officers to backlog cases and work toward providing timely and fair decisions. The accompanying decline in (c)(8) EAD applications would also allow USCIS to reallocate EAD staffing resources to other EAD application categories and decrease EAD processing times across the board.

USCIS recognizes that the initial pause on acceptance of new initial (c)(8) EAD applications may be lengthy as USCIS works to adjudicate the substantial backlog of pending asylum cases that are already pending before USCIS. However, USCIS believes this pause will result in a decrease in new asylum receipts comparable to the 80% decrease that was seen as a result of the INS's 1994 rulemaking. USCIS notes that the absolute number of aliens granted asylum remained relatively consistent following that rulemaking, indicating that changes in access to employment authorization did not deter aliens with meritorious asylum applications from filing. USCIS recognizes that in this proposed rule, the pause of on EAD application acceptances will likely be significantly lengthier than the 180-day waiting period implemented through the 1994 regulation and therefore there may be some aliens with potentially meritorious filings who are deterred from filing. In conjunction with the proposed regulatory changes, USCIS intends to generally maintain its LIFO processing to asylum adjudications and believes that the combination of vastly decreased receipts and the significant increase in asylum officers over recent years will allow USCIS to work through the backlog and get to a place where the agency is adjudicating new asylum applications within the 180-day time period after this rule takes effect.

USCIS notes this represents a return to the intended functioning of these sections of the INA and regulations. Employment authorization due to a pending asylum application is intended by the statute and existing regulation to be exceptional and unusual. By linking the ability to receive a new applications for (c)(8) EAD to the pending affirmative asylum caseload, USCIS intends to ensure that this section of the INA functions as it was intended to and eliminates the ability for aliens filing frivolous, fraudulent, or meritless asylum applications to create a vicious cycle by overwhelming the asylum system and then profiting from doing so at the expense of meritorious asylum applicants and the American people.

B. 365 Calendar-Day Waiting Period To Apply for (c)(8) EADs

As discussed previously, there are many factors that have contributed to the backlog of asylum cases that leads to the abuse of the asylum system for employment authorization. Among those has been the recent expansive use of deferred action, parole, and temporary protected status (TPS). In FY 2020, USCIS data show only 104 aliens with deferred action who subsequently filed a Form I–589; by FY 2025 (YTD) that number rose to 1,158—a 1,013% increase.[221] In FY 2020, USCIS data show only 758 aliens with parole who subsequently filed a Form I–589; by FY 2025 (YTD) that number rose to 156,242—a 20,512% increase.[222] In FY 2020, USCIS data show only 66 aliens with TPS who subsequently filed a Form I–589; by FY 2025 (YTD) that number rose to 43,512—a 65,827% increase.[223] These programs, quite simply, were not intended to provide permanent immigration status to aliens. The expansive use of these programs has not only further taxed the already strained asylum system, but also increased the presence of illegal aliens and other aliens with only temporary status and low likelihood of obtaining permanent status in the United States. Filing an application for asylum is one such way an alien in this position may seek to remain in the United States.

Over the span of decades, DHS has exercised discretionary authority to parole, grant deferred action, or exercise temporary parole authority expansively to create categorical parole programs.[224] The INA confers upon the Secretary the narrow discretionary authority to parole applicants for admission into the United States ''temporarily under such conditions as [DHS] may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.'' [225] While those parole

[220] USCIS, ''Form I–765 Application for Employment Authorization, All Receipts, Denials, Pending Grouped by Eligibility Category and Filing Type,'' (Apr. 30, 2025), *https://www.uscis.gov/sites/default/files/document/data/i765_application_for_employment_fy2025_q1.xlsx.*

[221] *See* USCIS OPQ data, I–589, Application for Asylum and for Withholding of Removal, I–730 Refugee/Asylee Relative Petition for FTJ–A Deferred Action, Parole, or TPS Preceding Asylum Filings Fiscal Years 2020–2025 (As of July 31, 2025).

[222] Id.

[223] Id.

[224] *See e.g.* DHS final rule, International Entrepreneur Rule, 82 FR 5238 (Jan. 17, 2017). DHS published a proposed rule (83 FR 24415, May 29, 2018) to rescind the International Entrepreneur Parole Program created in January 2017. Implementation of a Parole Process for Cubans, 88 FR 1266 (Jan. 9, 2023); Implementation of a Change to the Parole Process for Cubans, 88 FR 26329 (Apr. 28, 2023); Implementation of a Parole Process for Haitians, 88 FR 1243 (Jan. 9, 2023); Implementation of a Change to the Parole Process for Haitians, 88 FR 26327 (Apr. 28, 2023); Implementation of a Parole Process for Nicaraguans, 88 FR 1255 (Jan. 9, 2023); Implementation of a Parole Process for Venezuelans, 87 FR 63507 (Oct. 19, 2022); Implementation of Changes to the Parole Process for Venezuelans, 88 FR 1279 (Jan. 9, 2023).

[225] INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A); *see also* 8 CFR 212.5(a) and (c) through (e) (discretionary authority for establishing conditions of parole and for terminating parole). Parole was codified into immigration law in the Immigration and Nationality Act of 1952. As envisioned then, the 1952 Act authorized the Attorney General to parole aliens temporarily under such conditions as he may prescribe for emergent reasons or reasons deemed strictly in the public interest. As expressed then, ''the parole of aliens seeking admission is simply a device through which needless confinement is avoided while administrative proceedings are conducted.'' *See Leng May Ma* v. *Barber,* 357 U.S. 185, 190 (1958). However, the parole authority, whether intended to be narrow or broad, has in fact been used in an increasingly broad manner since its inception, often earning the criticism of Congress, which in 1996 wrote, ''[i]n recent years, however, parole has been used increasingly to admit entire categories of aliens who do not qualify for admission under any other category in immigration law, with the intent that they will remain permanently in the United States. This contravenes the intent of section 212(d)(5), but also illustrates why further, specific limitations on the Attorney General's discretion are necessary.'' *See* H.R. Rep. 104–469, pt. 1, at 140 (1996). Furthermore, IIRIRA struck from INA 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A), the phrase, ''for emergent reasons or for reasons deemed strictly in the public interest'' as grounds for granting parole into the

programs were terminated, many aliens are still in the United States, often without a pathway to lawful residence in the United States. Parole grants in recent years have been extremely large, with 795,561 parole grants in FY 2022 and 1,340,002 parole grants in FY 2023.[226]

In addition, the use of deferred action has expanded significantly. Deferred action is a form of discretion in which DHS chooses to not seek an alien's removal from the United States, though the alien lacks lawful status or is otherwise removable from the United States. Unlike parole, deferred action was not created by statute and is not specifically defined in the INA. The decision not to take an enforcement action is within the discretion of the agency.[227] Deferred action was never meant to supplant the current legal immigration process or provide long-term relief solely to allow an inadmissible, removable, or otherwise ineligible alien to remain in the United States until he or she can qualify for a legal status.[228] The largest categorical deferred action program is Deferred Action for Childhood Arrivals (DACA), and as of September 2024 approximately 538,000 [229] aliens were living in the United States with DACA.[230]

TPS is yet another program that does not lead to long-term legal status in the United States. Under section 244 of the Immigration and Nationality Act (INA), 8 U.S.C. 1254a, the Secretary of Homeland Security may designate a foreign state (or part thereof) for TPS after consulting with appropriate agencies of the U.S. Government and determining that there are specified conditions present in that foreign state or part of a foreign state, such as ongoing armed conflict that would pose a serious threat to the safety of retuning aliens.[231] The Secretary may then grant TPS to eligible nationals of that foreign state or eligible aliens having no nationality who last habitually resided in that state.[232] In addition, DHS has at times re-designated countries for TPS and allowed aliens who entered the United States after the initial designation of TPS to be newly eligible for TPS.[233] In Calendar Year 2024 there were approximately 1,396,586 TPS beneficiaries.[234]

The expansive use of these three programs over the years has created a very large population of illegal aliens that do not have pathways to permanent residence in the United States outside of seeking asylum. The expansive use of these programs has further incentivized aliens to file frivolous, fraudulent, or otherwise meritless asylum applications to gain employment authorization.[235] While each of these programs provides access for employment authorization, it is for a specific and time-limited period. Asylum remains an attractive option for aliens to secure employment authorization for an extended period of time, despite lacking a basis for asylum, due to the enormous backlog.

With this background, DHS is proposing in this rule to extend the time period an asylum applicant must wait before he or she is eligible to be granted employment authorization based on a pending asylum application from 180 days to 365 calendar days. *See* 8 CFR 208.7(a)(1). DHS also proposes to eliminate the separate waiting periods for eligibility to receive an EAD, so that aliens are eligible to apply and be granted employment authorization at the same time. Currently, an asylum applicant may file for employment authorization once their application for asylum has been pending for 150 days and may receive an EAD after their application for asylum has been pending for 180 days, excluding any alien-caused delays. 8 CFR 208.7(a)(1). Under the current model, both USCIS and the alien must track two timeframes: the 150-day waiting period, and the 180-day Asylum EAD Clock. The clock calculation is subject to starts and stops based on delays, depending on whether the delay is an agency-caused delay or an alien-caused delay. 8 CFR 208.7(a)(2). As described in section D.3.a of this preamble, this system is complicated and overly burdensome on both the alien and USCIS. Thus, DHS proposes to codify in regulation that it will merge the waiting period to apply and the waiting period to be eligible into one, straight-forward timeline: 365 calendar days.[236]

Under the proposed rule, USCIS will no longer have to account for alien-caused delays in calculating the 180-day Asylum EAD Clock, but will instead simply calculate 365 calendar days from the asylum application receipt date to determine when an alien can request employment authorization. The INS previously chose the 180-day waiting period to deter aliens who are meritless asylum seekers from filing frivolous, fraudulent, or meritless claims to obtain employment authorization. 59 FR 62284 (Dec. 5, 1994). As the 180-day waiting period is no longer providing a deterrence, DHS proposes to codify in regulation that it will change the time

United States and inserted ''only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.'' *See* Pub. L. 104–208, div. C, § 602(a). ''The legislative history indicates that this change was animated by concern that parole under 8 U.S.C. 1182(d)(5)(A) was being used by the executive to circumvent congressionally established immigration policy.'' *Cruz-Miguel* v. *Holder,* 650 F.3d 189, 199 n.15 (2d Cir. 2011).

[226] *Noem* v. *Svitlana Doe,* 605 U.S. ____ (2025); DHS, ''Parole Requests Fiscal Year 2023, Fourth Quarter'' (Apr. 3, 2024), *www.dhs.gov/sites/default/files/2024-07/2024_0403_dmo_plcy_parole_requests_q4.pdf;* DHS, ''Parole Requests Fiscal Year 2022'' (July 12, 2023), *www.dhs.gov/sites/default/files/2023-08/23_0712_cbp_fy22_parole_requests.pdf;* Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans, 90 FR 13611 (Mar. 25, 2025).

[227] *See United States* v. *Texas,* 599 U.S. 670 (2023).

[228] *See* Considerations of Deferred Action for Childhood Arrivals, Frequently Asked Questions, *https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions#:~:text=Although%20action%20on%20your%20case,confer%20any%20lawful%20immigration%20status.* (last visited May 27, 2025).

[229] *See* Office of Performance and Quality, USCIS, DHS, ''Count of Active DACA Recipients'' ELIS, CLAIMS3, queried 11/2024, PAER0015824, *https://www.uscis.gov/sites/default/files/document/data/active_daca_recipients_fy2024_q4.xlsx* (last visited May 1, 2025).

[230] *See* DHS, ''Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children'' Memorandum from Janet Napolitano, Secretary, DHS, to David V. Aguilar, Acting Commissioner, (June 15, 2012), *https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf.*

[231] INA sec. 244(b)(1), 8 U.S.C. 1254a(b)(1).

[232] *Id.*

[233] *See, e.g.,* 89 FR 26172 (Apr. 15, 2024) (extending and redesignating TPS for Ethiopia).

[234] USCIS OPQ DATA, ''PAER0015852_I821_CY24_Congressional_Current_Holders_as_of_2024-12-31_FIN'' (January 10, 2025).

[235] As detailed above, USCIS cross-referenced all asylum application denials with asylum application denials where the alien had a previously approved application for employment authorization in the (c)(8) category, and identified a pattern. In FY2015, USCIS issued 15,515 denials or referrals to asylum applicants, but only 4,578 (29.5%) had one or more previously approved (c)(8) EAD. By FY2023, USCIS issued 5,963 denials or referrals to asylum applicants, but 4,351 (72%) had one or more previously approved (c)(8) EAD. In FY2024, USCIS issued 5,709 denials or referrals to asylum applicants, but 5,087 (89%) had one or more previously approved (c)(8) EAD. In FY2025 (through May 22, 2025), USCIS issued 11,872 denials or referrals to asylum applicants, and 9,475 (79.8%) had one or more previously approved (c)(8) EAD. At the simplest level, if there were no asylum backlog and each asylum application received was adjudicated within 180 days, none of those aliens whose asylum applications were denied would have been granted an employment authorization. *See generally,* USCIS OPQ DATA ''*Form I–589, Application for Asylum and for Withholding of Removal (Principals only), Pending/Denial/Referral with a previously approved I–765(c)(8) by FY for FY2015–2025 (through May 22, 2025)*''.

[236] As described in section II.C.2 of this preamble, the proposed 365-waiting period would apply to applications filed on or after the effective date of the final rule. The proposed rule would retain the same substantive provisions regarding the 180-day Asylum EAD clock, and applicant-caused delays, as are found in the current 8 CFR 208.7(a)(1) and (2) for applications pending as of the effective date of the final rule.

period to a 365-day waiting period. USCIS notes that the current regulations allow the applicant to submit the application at 150 days and then builds in the 30-day processing timeframe buffer to add up to 180 days; but USCIS proposes now to eliminate the processing time buffer, so that that aliens may not apply until 365 days after their asylum application is received. Coupled with the 180-day adjudication timeframe, these changes could increase the total waiting period for an EAD to 545 days. By choosing a waiting period that exceeds the target 180-day processing time for asylum applications, DHS hopes to deter frivolous, fraudulent, or meritless applications and, in turn, be able to approve meritorious asylum applications more quickly, ensuring only those with approved asylum petitions are able to work within 365 calendar days.

Elimination of the 180-day Asylum EAD Clock would resolve some of the difficulties adjudicators face in processing (c)(8) EAD applications. The current 180-day Asylum EAD Clock requires complex and time-consuming tracking of clock starts and stops for each alien's case and coordination with EOIR for defensively filed cases that are not under USCIS' jurisdiction. *See* 8 CFR 208.7(a)(2). Changing the process from a 180-day clock with starts and stops to a clear 365-calendar-day waiting period would simplify the determination of the date of the alien's employment authorization eligibility.

Moving from the 180-day Asylum EAD Clock to a straightforward 365 calendar-day waiting period would also eliminate the need to use finite government resources for the purpose of calculating clock starts and stops, and for providing customer service support for aliens who have questions about their clock status, including potential miscalculations or questions about clock stoppages. Under this proposed rule, DHS would deny EAD applications filed before the 365 calendar-day waiting period has elapsed. Once accepted, DHS would be able to adjudicate the request on the proposed substantive eligibility requirements without expending resources on clock calculations.

DHS believes increasing the waiting period before an asylum applicant may obtain employment authorization will also decrease the incentives for aliens who do not have meritorious asylum claims to exploit the system by filing frivolous, fraudulent, or meritless claims in order to obtain employment authorization. Currently, an asylum applicant may file for employment authorization once their application for asylum has been pending for 150 days and may receive an EAD after their application for asylum has been pending for 180 days, excluding any alien-caused delays. 8 CFR 208.7(a)(1). As the USCIS affirmative asylum pending caseload is at approximately 1.45 million and the EOIR asylum application pending caseload is over 2.37 million,[237] there is a significant incentive for certain aliens to exploit the immigration system and file for asylum, even if their cases will ultimately be denied on the merits, as a means to obtain employment authorization for the years' long period that their application is pending.[238] In order to combat the rising backlog of affirmative asylum cases and the significant length of time aliens wait before adjudication and comply with statutory interview requirements,[239] legacy INS implemented the last in, first out (LIFO) asylum adjudication scheduling priorities, which aims to deter those who might try to take advantage of the existing backlog in order to obtain employment authorization.[240] Giving priority to recent filings typically allows USCIS to promptly place aliens into removal proceedings if USCIS does not grant the asylum application, which reduces the incentive to for aliens contemplating filing for asylum today solely to obtain employment authorization.[241] LIFO was first established during the asylum reforms of 1995 and used for 20 years until 2014. The end of LIFO in 2014 led to a significant increase in asylum application filings. Subsequently, LIFO was reimplemented in 2018, and USCIS continues to give priority to recent filings today. However, by the time USCIS returned to LIFO scheduling, the backlog had grown by more than 1,750 percent from FY 2014 through FY 2017.[242]

In March 2024, USCIS implemented a second simultaneous scheduling track in addition to LIFO. Under the second track, USCIS assigns some of its asylum officers to complete affirmative asylum applications pending in the backlog, starting with the oldest applications and working forward. This permits some of the oldest pending applications to be completed in chronological order.[243]

USCIS has not been able to reduce the backlog of affirmative asylum applications through scheduling alone, and DHS continues to see large numbers of affirmative asylum application filings, the majority of which are likely to be ultimately unsuccessful, and significant numbers of related employment authorization applications. As described in Section III.C., USCIS has tripled the number of asylum officers in the last decade and implemented numerous other efforts to address the building backlog and integrity concerns. However, in recent years, insufficient staffing,[244] insufficient physical office space,[245] and shifting geopolitical realities, including a fundamental shift in global migration patterns,[246] and the expansive use of parole, deferred action, and TPS, have necessitated the reassignment of asylum officers to other urgent caseloads, such as credible fear and reasonable fear screenings and other border-related workloads. The diversion of asylum officers to other mandatory tasks, along with the surge in litigation seeking to compel immediate action on individual asylum applications, reduced the number of asylum officers available for the processing of non-litigation-related affirmative asylum applications, which drastically decreased the number of affirmative asylum interviews scheduled and applications adjudicated.[247] Because of these recent

[237] USCIS, ''Number of Service-wide Forms By Quarter, Form Status, and Processing Time'' (Apr. 30, 2025), *https://www.uscis.gov/sites/default/files/document/data/quarterly_all_forms_fy2025_q1.xlsx;* EOIR, *Adjudication Statistics: Total Asylum Applications* (July 31, 2025), *https://www.justice.gov/eoir/media/1344871/dl?inline.*

[238] *See, e.g.,* Muzaffar Chishti & Julia Gelatt, ''Mounting Backlogs Undermine U.S. Immigration System and Impede Biden Policy Changes,'' Migration Policy Institute (Feb. 23, 2022); Doris Meissner, et al., ''The U.S. Asylum System in Crisis; Charting a Way Forward,'' Migration Policy Institute (Sept. 2018), pp. 4 and 9–12, for additional discussion on the impact of backlogs and delays in immigration proceedings.

[239] *See* INA § 208(d)(5)(A)(ii), ''. . . in the absence of exceptional circumstances, the initial interview or hearing on the asylum application shall commence not later than 45 days after the date an application is filed[.]''

[240] USCIS, ''Affirmative Asylum Interview Scheduling,'' *https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/affirmative-asylum-interview-scheduling* (last updated Mar. 29, 2024).

[241] *Id.*

[242] USCIS, ''USCIS to Take Action to Address Asylum Backlog'' (Jan. 31, 2018), *https://www.uscis.gov/archive/uscis-to-take-action-to-address-asylum-backlog.*

[243] USCIS, ''Affirmative Asylum Interview Scheduling'' *https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/affirmative-asylum-interview-scheduling* (last updated Mar. 29, 2024).

[244] Office of Inspector General, DHS, ''USCIS Faces Challenges Meeting Statutory Timelines and Reducing Its Backlog of Affirmative Asylum Claims'' (July 3, 2024), *https://www.oig.dhs.gov/sites/default/files/assets/2024-07/OIG-24-36-Jul24.pdf.*

[245] *Id.*

[246] *Id.;* IOM, *World Migration Report 2024: Chapter 3—Migration and migrants: Regional dimensions and developments* (2024), available at *https://publications.iom.int/books/world-migration-report-2024-chapter-3* (last accessed July 15, 2025).

[247] *See* USCIS, ''Asylum Application Processing Fiscal Year 2023 Report to Congress'' at 5–7, (Nov.

challenges to an already overwhelmed system and the fact that the processing order, alone, is not sufficient to address the massive number of asylum filings, additional measures must be implemented to deter meritless asylum filings. DHS believes that introducing a 365 calendar-day waiting period will result in a decreased number of asylum filings. The combined effect of the extended waiting-period for employment authorization and USCIS' prioritization of recently-filed asylum applications should drive the number of meritless asylum filings down and allow USCIS to dedicate more adjudicative resources to backlog cases.

C. Changes to Filing Requirements for Asylum Applications

DHS proposes to codify in regulation changes to the filing requirements for asylum applications to streamline the intake, processing, and adjudication of cases pending before USCIS. The proposed 8 CFR 208.3(c)(3) has been updated to conform its current process for determining when an asylum application is received and complete to the general rules governing all other immigration benefits under 8 CFR 103.2. Currently, 8 CFR 208.3(c)(3) states that an asylum application is incomplete if it does not include a response to each question on the Form I–589, is unsigned, or is unaccompanied by the required materials specified in 8 CFR 208.3(a)(1) (*i.e.,* the Form I–589, supporting evidence, and additional copies of the Form I–589 for each dependent family member). Further, the current regulation states that an incomplete application will not commence the EAD clock and that USCIS will return it to the alien within 30 days. 8 CFR 208.3(c)(3). However, if USCIS fails to return an incomplete application within 30 days, the application will automatically be deemed complete and accepted for adjudication. *Id.*

In order to facilitate the alignment of affirmative asylum applications with the general requirements for filing benefit requests with USCIS, the proposed rule specifies, in part, that an asylum application filed with USCIS must be properly filed in accordance with 8 CFR 103.2 and the form instructions and that USCIS will record the receipt date of the application in accordance with 8 CFR 103.2(a)(7). The proposed rule also specifies that the receipt date will begin the waiting period for an EAD. Similar to the movement from the 180-day Asylum EAD Clock to the 365-calendar day wait, this change eliminates another decision point for the agency in order to preserve finite government resources. Rather than have the commencement of the waiting period be another question needing adjudication, this change would automate it.

The regulation as proposed states that an application that is not filed in accordance with 8 CFR 103.2 and the form instructions would be deemed incomplete, then subsequently rejected and returned to the applicant within 30 days. 8 CFR 103.2 and form instructions for Form I–589, Application for Asylum and for Withholding of Removal clearly explain the requirements for a complete form. 8 CFR 103.2 requires that every form submitted to DHS be in accordance with the form instructions, and the instructions for Form I–589, Application for Asylum and for Withholding of Removal require that the alien answer all questions on the form. Additionally, 8 CFR 103.2 and the form instructions require a signature on the form. 8 CFR 103.2 clarifies that this signature may be the alien, or the alien's parent or legal guardian if the alien is under 14 years of age or is unable to sign due to mental incompetence. Finally, Form I–589 form instructions require that the alien submit ''reasonably available corroborative evidence'' to support the claim and other required materials, including a copy of identity documents. USCIS is currently under an obligation to return incomplete asylum applications to the alien within 30 days of the receipt of the application. Since 2023, USCIS has rejected 9.44% of submitted asylum applications solely due to a form deficiency, meaning that a required field on the form was not completed.[248] Over the same time, USCIS has rejected an additional 11% of submitted applications for having multiple defects, one of which included a missing required field.[249] This rule's added clarity that asylum applicants must properly fill out their forms would decrease the percentage of rejected asylum applications and increase the quality of asylum applications received by the agency.

Currently, if USCIS fails to return an incomplete application within 30 days, the application will automatically be deemed complete and accepted for adjudication. This current requirement is burdensome on USCIS because it places an adjudication obligation on USCIS where an alien files an incomplete application. The 30-day provision is also inconsistent with how all other applications and petitions for immigration benefits are treated, and it creates an arbitrary circumstance for treating a potentially incomplete asylum application as complete. In fact, Form I–589 is the only USCIS form that the agency is required to accept, even if it is incomplete, simply because more than 30 days have passed since receipt. This disparity in treatment creates an opportunity for frivolous, fraudulent, or otherwise meritless applications to exploit the asylum process from the start and add to the massive affirmative asylum backlog. Additionally, asylum officers must obtain the omitted information during asylum interviews expending scarce resources on basic information gathering simply because an alien chose not to provide such information at the time of filing. Therefore, the proposed regulations would treat asylum applications like all other applications received and adjudicated by USCIS, meaning that after the effective date of this rule incomplete asylum applications would not be deemed complete even if USCIS does not return a rejected application within 30 days of receipt. An alien should consider the filing date on their receipt notice as beginning the 365-day waiting period. If an application is subsequently rejected as incomplete and returned to the applicant, the 365-day waiting period will start over when the application is resubmitted, accepted, and receipted.

Finally, as discussed earlier, this regulation proposes to substitute the 180-day Asylum EAD Clock with a straightforward 365 calendar-day waiting period. Thus, provisions regarding alien-caused delays for the purposes of the 180-day Asylum EAD Clock would also be stricken.

D. Processing Timeframe for (c)(8) EADs

Currently, USCIS is required to adjudicate initial (c)(8) employment authorization applications within 30 days from when the applicant files the Form I–765. 8 CFR 208.7(a)(1). This processing timeframe was established more than 30 years ago (59 FR at 62299), at a time when affirmative asylum and employment authorization application receipts were significantly lower, biometrics were collected under a different process, screening and vetting between different federal agencies was

1, 2023), *https://www.dhs.gov/sites/default/files/2024-01/2023_1101_uscis_asylum_application_processing_fy2023.pdf.* For example, in FY 2024, USCIS completed 40 percent less affirmative asylum applications than it completed in FY 2022. USCIS, ''All USCIS Application Petition Form Types (Fiscal Year 2024, Quarter 4)'' (Dec. 18, 2024), *https://www.uscis.gov/sites/default/files/document/data/quarterly_all_forms_fy2024_q4.xlsx.*

[248] USCIS analysis of internal OIDP data on the number of Forms I–589 rejected (coded solely ''R–42'') at intake due to incomplete applications, May 28, 2025.

[249] *Id.*

less complex, and the pending affirmative asylum caseload was nowhere near its current number of close to 1.45 million pending asylum cases. At the time the 30-day processing timeframe was implemented, the former INS adjudicated EAD applications at local INS offices. Now, with the explosive growth of applications, EAD applications are processed by USCIS service centers. Another complicating factor in the processing of applications for employment authorization is the increased concern for fraud and national security threats that require more thorough and complex vetting.

As discussed above in Section III.D, in 2015, as a result of the massive growth in applications and increased wait times in processing, plaintiffs in *Rosario* v. *USCIS* brought a class action to compel USCIS to comply with the 30-day processing timeframe required under 8 CFR 208.7(a)(1).[250] On July 26, 2018, the district court enjoined USCIS from further failing to adhere to the 30-day processing timeframe for adjudicating (c)(8) EAD applications.[251] Since the *Rosario* court order, USCIS has redistributed its adjudicative resources to comply with the 30-day processing requirement. Furthermore, USCIS is required to utilize overtime in order to even come close to compliance with the 30-day processing time, offering cross-training to officers working other benefit types, reassigning officers from other benefit types such as TPS and EAD renewals, and assigning officers to work (c)(8) initials as a part-time assignment in addition to their normal caseloads. There have been continued efforts to comply with the court order, but this time and resource burden has placed significant strain on already limited agency resources. Applications for initial (c)(8) EADs were until recently free to file, and while this was offset by increased fees for other services,[252] this immense (c)(8) EAD 30-day processing burden still fell directly to the agency. The full-time equivalent hours needed to maintain substantial compliance with the 30-day processing time has grown by over 16 times since the *Rosario* settlement. By way of comparison, at the time of the *Rosario* settlement the adjudication of monthly incoming (c)(8) initial applications required the equivalent of 50 fulltime employees to maintain compliance with incoming receipts. By March 2025, the equivalent of more than 800 fulltime employee equivalents was required to maintain compliance due to the significant increase of incoming monthly receipts. This massive increase creates an obvious strain on finite operational resources and necessitates cross-training, utilizing overtime, and pulling resources from other workloads in the increasingly arduous burden to attempt to maintain substantial compliance with the 30-day processing requirement. This is equivalent to approximately 20 percent of all immigration services officers. By extending the 30-day processing timeframe to 180-days, these resources could be reallocated, potentially reducing delays in processing other benefit requests. Extension of the 30-day processing timeframe to 180-days for initial applications for employment authorization filed on or after the effective date of the final rule would increase agency flexibility in allocating resources, determining caseload priorities, and implementing new vetting processes as needed.

Due to these resource constraints and vetting needs, DHS has considered changing its processing timeframes for (c)(8)-based employment authorization applications and is now proposing to extend the processing timeframe for initial (c)(8) EAD applications from 30 to 180 days to allow for adequate review time. It should be noted that while DHS adjudicates employment authorization applications for dozens of EAD categories, the (c)(8) employment authorization category is the only category with an adjudication clock; unfortunately, the (c)(8) category is the highest volume EAD category. In fact, in FY 2025 Q1, USCIS received 387,015 applications for employment authorization based on a pending asylum application.[253] The second closest category for incoming receipts in FY 2025 Q1 was (c)(11), employment authorization for public interest parolees, with 135,274 applications for employment authorization.[254] Based on FY 2025 Q1 data, incoming receipts in the (c)(8) EAD category were more than double that of the next largest volume EAD category. The overwhelming scale of (c)(8) EAD application receipts, coupled with a need for upgraded approaches to process integrity and vetting, warrant an extension of the (c)(8) EAD application processing timeframe. DHS believes that an increase from the 30 days to 180 days for processing will provide EAD adjudicators with adequate time to conduct background checks and thoroughly vet aliens as provided for in this proposed rulemaking. DHS also believes that increasing the processing timeframe to 180 days provides the agency with a significant buffer for potential surges in asylum receipts. Therefore, DHS proposes to codify in regulation that it will extend the processing timeframe from 30 to 180 days for initial employment authorization applications filed on or after the effective date of the final rule.

DHS understands that asylum applicants whose EAD applications were pending prior to the effective date of the final rule may have been relying on the 30-day processing timeframe. Therefore, for initial applications for employment authorization received prior to the effective date of the final rule, DHS would not change that processing timeframe. This would allow USCIS the flexibility to quickly process those applications that were pending prior to the rule's effective date, understanding that these asylum applicants who may have relied upon the 30-day processing time that existed at the time they filed their (c)(8) EAD applications. Maintaining the 30-day processing timeframe for aliens whose applications for employment authorization based on pending asylum applications were pending prior to the effective date of the final rule would also offer those aliens more predictability in the adjudication of their applications.

For initial applications for employment authorization received on or after the effective date of the final rule, DHS would extend the processing timeframe from 30 to 180 days. DHS recognizes the reliance interests of any alien who has filed an asylum application and is waiting the current 150-days to file an application for employment authorization and expecting a decision on his or her (c)(8) EAD application within 30-days and who would be impacted by the changes in this rulemaking, if finalized. Further, DHS understands that the extension of a processing timeframe may create hardship and insecurity for aliens who would prefer to have a shorter deadline

[250] *Rosario,* 365 F. Supp. 3d. 1156. The plaintiffs in *Rosario* also sought to compel USCIS to comply with the 90-day rule for (c)(8) renewals based on the EAD adjudicative timeframe in 8 CFR 274a.13(d). USCIS' failure to comply with either the 30-day timeframe for initial (c)(8) EAD applications or the 90-day timeframe for (c)(8) renewals meant USCIS should have issued interim employment authorization under (then current) 8 CFR 274a.13(d) (2015).

[251] *Id.*

[252] U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 89 FR 6194, 62172–73 (Jan. 31, 2024).

[253] USCIS, ''Form I–765, Application for Employment Authorization Counts of Pending Applications by Days Pending and by filing type for All Eligibility Categories and (c)(8) Pending Asylum Category (Fiscal Year 2025, Quarter 1)'' (Apr. 30, 2025), *https://www.uscis.gov/sites/default/files/document/data/i765_p_allcat_c08_fy2025_q1.xlsx.*

[254] *Id.*

by which they can expect the adjudication of their work authorization.

However, DHS has determined that several other considerations outweigh those reliance interests. Considering the enormous size of this pending affirmative asylum caseload, the need to prevent frivolous, fraudulent, or meritless filings and protect the integrity of the immigration system, that this is the only EAD category with a processing timeframe, the substantial amount of finite USCIS resources taken up by this workstream, and the tendency of this workstream to vary in number of receipts significantly over a very short period of time, extension of the processing timeframe is the only feasible change for USCIS. This processing timeframe extension to 180 days will provide USCIS with sufficient time to schedule a biometrics collection, adequately screen and vet, refer to ICE if necessary, and process initial (c)(8) applications for employment authorization. Scheduling biometrics collection and adequate screening and vetting, in addition to referrals to ICE if derogatory information is discovered, takes more than 30 days, and the extension of the processing timeframe to 180 days will allow USCIS to more thoroughly review potential concerns and flag issues that may prohibit an alien from receiving employment authorization. This will reduce opportunities for fraud and protect vital national security and public safety interests by denying those with certain criminal or security concerns from accessing employment authorization, further strengthening the integrity of the immigration system. DHS believes the combination of multiple factors ultimately outweigh the alien's expectation to receive employment authorization within 30 days of applying, which include the need to adjudicate all EAD applications in a timelier manner, requiring reallocation of adjudicatory resources from the (c)(8) applications to other EAD categories, to thoroughly vet aliens applying for employment authorization, to refocus on the initial intention of the asylum process, timely adjudication of an alien's request for asylum, and to prioritize benefit integrity overall. Additionally, USCIS is not bound to a set timeframe for adjudication of EAD applications in other categories, and due to the extremely short turnaround to adjudicate initial (c)(8) EAD applications, the other categories of EAD applications have been deprioritized. Extending the processing timeframe for initial (c)(8) EAD applications will allow USCIS to more equitably distribute resources to process other employment authorization applications and process all EAD applications in a more efficient and timely manner.

E. Biometrics Requirements

The proposed rule requires all applicants for a (c)(8) EAD, including applicants to renew a (c)(8) EAD, to submit biometrics. Currently, DHS requires biometrics from asylum applicants in connection with the asylum application,[255] but has not had a routine biometrics requirement for the (c)(8) EAD application. The continued absence of a routine biometrics requirement will lead to complications and delays in adjudicating the (c)(8) EAD application given the requirement for the agency to identify aliens for aggravated felonies, along with the additional proposed eligibility requirements discussed later in this document.

To support the enhanced eligibility requirements that would be added under this rule, the proposed provision at 8 CFR 208.7(a)(1)(i) requires all applicants for a (c)(8) EAD to submit biometrics at a date and time to be scheduled by USCIS. Consistent with its current practices for applications and petitions with an associated biometrics requirement, USCIS would issue a notice informing the (c)(8) EAD applicant of the place and time of their ASC appointment.

For the (c)(8) population itself, the biometrics requirement would resolve program integrity gaps for both the affirmative and defensive-based asylum pathways. The (c)(8) employment authorization category has a specific aggravated felony conviction bar under 8 CFR 208.7(a)(1). While the Form I–589 on which the (c)(8) eligibility is reliant does have a biometrics requirement that provides an avenue for criminal history check results to be obtained and reviewed in order to apply the aggravated felony conviction bar, the asylum EAD filing and approval clock requirements introduce unintended disruptions to the availability of this information. For both affirmative and defensive applicants, unintended delays in scheduling biometrics appointments for the Form I–589 frequently result in the alien accruing 150 and 180-days before appearing at an Applicant Support Center. This results in the (c)(8) application being adjudicated without biometric-based criminal history check results and the intended application of the aggravated felony conviction bar. In FY2024 the average amount of time between Form I–589 filing and completed biometrics collection was 96 days; in FY 2025 (YTD through July 30, 2025) the average was 126 days.[256] Operationally this means some cases would be above those averages, other cases would be lower. In general, however, Form I–589 is auto expedited when scheduling ASC appointments; I–589s receive the first appointment available. As with any USCIS form subject to biometrics collection, aliens can self-reschedule their I–589 biometrics appointment twice on USCIS' website. USCIS accepts reschedule requests via website, contact center, or by contacting their local office; but each asylum office has their own rescheduling policy. Further, for defensive asylum applicants, the application of the aggravated felony conviction bar and availability of biometric-based criminal history check results is dependent on EOIR courts applying the clock stop codes to document the alien's attendance at biometric appointments. For certain defensive applicants, they do not attend an ASC appointment, fingerprint results are not generated, but the clock accrual requirements are met and the I–589 remains pending before EOIR. At present, without a (c)(8) biometrics requirement, these cases must be decided without the benefit of biometric-based criminal history check results and an incomplete background check assessment for the aggravated felony conviction bar.

The new routine biometrics requirement will also benefit the U.S. government by enabling DHS to know with greater certainty the identity of aliens requesting EADs in connection with an asylum application and allowing USCIS to detect any identity or fraud issues that may have occurred between the 365-days when the asylum application was filed and when the (c)(8) EAD can be filed. The biometrics requirement also will allow DHS to conduct criminal history background checks for public safety and national security. USCIS will use the alien's biometrics to securely produce the EAD and properly vet the alien's criminal history to determine if the alien warrants a favorable exercise of discretion.

[255] USCIS, DHS, ''Instructions for Application for Asylum and for Withholding of Removal (Form I–589),'' OMB No. 1615–0067 (expires Sept. 30, 2027), *https://www.uscis.gov/sites/default/files/document/forms/i-589instr.pdf* (last updated Jan. 20, 2025).

[256] USCIS internal data, Immigration Records and Identity Services, Form I–589 Biometrics Appointment Metrics, July 30, 2025.

F. Eligibility Requirements

As discussed elsewhere in this proposed rule, a (c)(8) EAD is not an entitlement but is provided by the authority and within the discretion of the Secretary. INA sec. 208(d)(2), 8 U.S.C. 1158(d)(2). Since the (c)(8) EAD is explicitly tied to an application for asylum, DHS proposes to codify in regulation that it will introduce additional eligibility requirements for a (c)(8) EAD benefit that mirror many baseline eligibility requirements for asylum, including the 1-year filing deadline, criminal bars, and illegal entry such that those who are ineligible for asylum are also rendered ineligible for an EAD.

These additional eligibility requirements are a departure from the policy expressed in the 1994 asylum NPRM, which states that ''[t]he INS will adjudicate these applications for employment authorization within 30 days of receipt, regardless of the merits of the underlying asylum claim.'' 59 FR at 14780. In that NPRM, the INS determined that decoupling the asylum application from the application for employment authorization would discourage applicants from filing meritless asylum applications solely to obtain employment authorization. At that time, the INS believed that all applicants would have work authorization after 180 days unless their asylum claims were denied. The INS also believed that delaying pending asylum applicants' ability to apply for employment authorization would allow the agency to gain better control over growing backlogs and processing times. Now, DHS has determined that recoupling these applications by implementing stronger eligibility requirements is necessary to achieve those same results. The departure from the 1994 NPRM is necessary and appropriate for multiple reasons: the huge pending affirmative asylum caseload of 1.45 million, the sheer scope and complexity of the frivolous, fraudulent, and meritless asylum filings has increased, and the continually growing number of (c)(8) EAD applications that currently unduly burdens USCIS operations. As discussed thoroughly in the overview of reform efforts above, DHS believes that the high number of asylum applications and corresponding (c)(8) EAD applications is made up, in part, of frivolous, fraudulent, or otherwise meritless filings. Thus, DHS believes that introducing certain eligibility requirements will help curb filings of meritless asylum applications and allow USCIS to better address current pending applications in a timely and orderly manner, and—most significantly—will only limit access to EADs for aliens who would not ultimately be eligible for asylum.

Finally, DHS acknowledges that requiring EAD adjudicators to consider new eligibility requirements that are also analyzed in the asylum interview will likely increase the time needed to process (c)(8) employment authorization applications and could be viewed as contradictory to stated efficiency goals. However, DHS expects that implementing these new eligibility requirements will help the department achieve the desired effect of more efficiently identifying and adjudicating meritless cases and national security or public safety concerns. In the long run, achieving these goals will also help DHS increase efficiency in adjudications.

1. One-Year Filing Deadline

DHS proposes to codify in regulation that it will generally deny requests for (c)(8) EAD applications by aliens who have not demonstrated that they filed their asylum application in accordance with the 1-year filing deadline, as described in 8 CFR 208.4(a)(2).

With the passage of IIRIRA, Congress added three categorical statutory bars to applying for asylum. Public Law 104–208, div. C, sec. 604(a), 110 Stat. 3009, 3009–691; INA sec. 208(a)(2), 8 U.S.C. 1158(a)(2). Aliens who failed to apply for asylum within 1 year of arriving in the United States are subject to a bar to applying for asylum, unless they can demonstrate that there are changed circumstances materially affecting the alien's eligibility for asylum or extraordinary circumstances directly related to the failure to meet the 1-year filing deadline. INA sec. 208(a)(2)(B), (D), 8 U.S.C. 1158(a)(2)(B), (D). This bar is commonly known as the 1-year filing deadline. Through statute, Congress specifically chose to promote efficiency by prohibiting asylum applications filed more than 1 year after entry. The 1-year time frame was contemplated by Congress as an acceptable timeframe in which aliens should be able to secure legal representation and seek asylum relief. In fact, Congress specifically rejected other time frame proposals, like that of a 30-day asylum application filing deadline, choosing instead to set a 1-year filing deadline.[257]

Despite this prohibition, both DHS and EOIR adjudicate asylum applications filed by aliens who reside in the United States for years before applying for asylum. As of May 14, 2025, approximately 520,964 pending affirmative asylum applicants filed their Form I–589 between 1 year and over 10 years after entry. As of July 30, 2025, approximately 97,452 affirmative asylum cases filed between 1 year and over 10 years after entry were granted and 274,633 cases filed with the same timeframe were referred or denied. Many aliens filing for asylum now are aliens who were inspected and admitted or paroled but failed to depart at the end of their authorized period of stay (overstays), or who entered without inspection and admission or parole.[258]

As mentioned throughout, there is a record of close to 1.45 million pending affirmative asylum cases in USCIS' pending affirmative asylum caseload. USCIS is under great strain to adjudicate these cases, and the average processing time for an affirmative asylum case is 1,287 days. Due to how long it can take to adjudicate an affirmative asylum application, and because of the significant disparity in the eligibility requirements between an asylum application and a (c)(8) EAD, there is little to dissuade an alien from filing an asylum application for the sole purpose of obtaining employment authorization, even when an alien is statutorily ineligible for asylum or there is minimal likelihood that asylum would be granted.

USCIS has also attempted to reduce the affirmative asylum backlog in other ways. For example, a contributing factor to the asylum backlog is an increase in the number of aliens who file skeletal or meritless asylum applications affirmatively to seek a referral to the immigration court by an asylum officer. Once placed in removal proceedings in the immigration court, the alien can apply for cancellation of removal (COR) [259]—a form of relief from removal resulting in lawful permanent residence available to those who have at least 10 years of physical presence in the United

[257] *See* H. Rept. 104–469 (1995); Philip G. Schrag, et al., ''Rejecting Refugees: Homeland Security's Administration of the One-Year Bar to Asylum,'' 52 Wm. & Mary L. Rev. 651 (2010), pp. 669–672, *https://scholarship.law.wm.edu/wmlr/vol52/iss3/2/.*

[258] Noah Schofield and Amanda Yap, Office of Homeland Security Statistics, ''Asylees: 2023'' (Oct. 2024), at 3, *https://ohss.dhs.gov/sites/default/files/2024-10/2024_1002_ohss_asylees_fy2023.pdf* (From 2014–2023 (''about 79 percent of affirmative asylum applicants self-reported the status in which they entered the United States before applying for asylum. Of those who provided a response, 32 percent reported having entered on B–2 visas (tourists), 25 percent reported having entered without inspection (EWI, *i.e.,* having been unauthorized), and 5.8 percent reported having entered on B–1 visas (temporary business visitors).'').

[259] Internal USCIS Memo—Procedures for Notice of Evidence of Untimely Filing and Optional Waiver of Asylum Interview.

States and who meet additional eligibility criteria.[260]

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DHS has attempted to address asylum applications filed outside of the 1-year filing deadline by seeking to reduce asylum filings that are intended to result in removal proceedings for the purpose of seeking COR. In 2018, the Asylum Division began issuing Untimely Filing notices to asylum applicants with over 10 years of physical presence, allowing aliens to waive their asylum interview and be referred to immigration court. In FY 2023, the Asylum Division formalized these procedures concerning late-filed cases and continues to offer aliens the opportunity to waive the asylum interview and be referred to immigration court based on the 1-year filing deadline.[262] In February 2025, the Asylum Division centralized at the Asylum Vetting Center the issuance of all interview waiver notices for these late-filed cases and the referral to immigration court of aliens who accepted the interview waiver. As of April 9, 2025, USCIS estimates that approximately 82,700 pending cases have been filed by aliens who were living in the United States for at least 10 years at the time of filing their asylum application. In FY 2025 Q1, USCIS offered interview waivers to 2,957 applicants; 8 percent accepted the offer. In the past 5 fiscal years, including FY 2025 Q1, approximately 18 percent of aliens who were offered the opportunity to waive their interview accepted the offer. With this low rate of interview waivers offered and accepted, there has not been significant impact on the asylum backlog or on the rate of affirmative asylum application filings.

To curb the pull-factor of employment authorization for those who have been present in the United States for more than 1 year, DHS proposes to codify in regulation an ineligibility ground for (c)(8) EAD applications based on the application of the 1-year filing deadline for asylum applications. This provision would reduce the asylum influx of applications by disincentivizing aliens to file meritless asylum applications for the sole purpose of obtaining employment authorization. As Congress determined, absent changed or extraordinary circumstances, the statutory 1-year filing period is a sufficient period of time for aliens with meritorious asylum claims to submit their application to USCIS or an IJ.[263] DHS proposes to codify in regulation that it will apply the one-year filing deadline provision to any alien who filed his or her asylum application on or after the effective date of this final rule and filed the application after the 1-year filing deadline.

DHS is also proposing to allow two very limited exceptions to the 1 year-filing deadline as it relates to eligibility for a (c)(8) EAD. First, the rule proposes to except aliens from the application of the one-year bar to their (c)(8) EAD application for those who have established an exception under section 208(a)(2)(D) of the INA, 8 U.S.C. 1158(a)(2)(D), as determined by an asylum officer or IJ. For instance, there are situations where an asylum application is referred to the IJ on its merits, but the asylum officer had determined that an exception to the 1-year filing deadline bar applied. In a situation such as this, while the asylum applicant's case is pending review before the IJ, his or her application for employment authorization would not be barred by the 1-year filing deadline because they meet the exception.

Second, the rule proposes to codify the statutory exception to the application of the 1-year bar for aliens whose applications were under USCIS' initial jurisdiction because the alien was a UAC under 6 U.S.C. 279(g)(2).[264] This provision also follows the Settlement Agreement in *J.O.P.* v. *U.S. Dept of Homeland Security,* 8:19–cv–01944 (D. Md.) (approved Nov. 25, 2024) (*J.O.P.* Settlement Agreement), under which the statutory 1-year filing deadline does not apply if the alien is a class member who was previously under USCIS' initial jurisdiction as a UAC even if an IJ later found that the alien was no longer a UAC.

2. Criminal Bars

In recent years, the United States has seen a massive influx of migrants, requiring DHS to divert resources to address the high number of migrant arrivals. The sharp increase of arriving migrants also coincided with a sharp increase in U.S. Border Patrol criminal alien arrests,[265] which rose from 4,269 in FY 2019 and 2,438 in FY 2020 to 10,763 in FY 2021.[266] In FY 2024, U.S. Border Patrol criminal alien arrests reached a record high of 17,048, to include aliens with convictions for offenses such as driving under the influence; assault, battery, domestic violence; illegal drug possession, trafficking; and illegal entry or re-entry.[267]

Under current regulations, aliens who have been convicted of an aggravated felony are ineligible for a (c)(8) EAD.

[260] *See generally,* INA sec. 240A(b), 8 U.S.C. 1229b.

[261] *See* H. Rept. 104–469 (1995); Philip G. Schrag, et al., ''Rejecting Refugees: Homeland Security's Administration of the One-Year Bar to Asylum,'' 52 Wm. & Mary L. Rev. 651, 669–72 (2010), *https://scholarship.law.wm.edu/wmlr/vol52/iss3/2/.*

[262] Internal USCIS Memo—Procedures for Notice of Evidence of Untimely Filing and Optional Waiver of Asylum Interview.

[263] *See,* IIRIRA, Public Law 104–208, div. C, sec. 604(a), 110 Stat. 3009, 3009–691. INA sec. 208(a)(2)(B), 8 U.S.C. 1158(a)(2)(B).

[264] INA sec. 208(a)(2)(E), 8 U.S.C. 1158(a)(2)(E).

[265] ''Criminal alien'' is a term used by CBP to refer to individuals who have been convicted of one or more crimes, whether in the United States or abroad, prior to interdiction by the U.S. Border Patrol; it does not include convictions for conduct that is not deemed criminal by the United States. *See* CBP, ''CBP Criminal Alien Statistics,'' *https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/criminal-noncitizen-statistics* (last updated May 12, 2025).

[266] CBP, ''CBP Criminal Alien Statistics,'' *https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/criminal-noncitizen-statistics* (last updated May 12, 2025).

[267] *Id.*

However, there are currently no other criminal bars to (c)(8) EAD eligibility. With growing numbers of migrants and the parallel increase of criminal alien arrests, DHS must prioritize the safety and security of the American people over providing a discretionary benefit to aliens in general, but in particular to aliens who are statutorily ineligible for the underlying benefit. This rule will prioritize the safety and security of the American people by disincentivizing illegal migration and criminal conduct for aliens who would like to obtain employment authorization. It logically follows that aliens who are barred from a grant of asylum due to criminal conduct should not be issued an EAD because of the asylum backlog or USCIS processing times. There are multiple reasons for this; first, the (c)(8) EAD is discretionary, and the Secretary does not want to favorably exercise discretion for such criminal aliens. Second, the criminal conduct is sufficiently serious to bar them from a grant of asylum, so it is incongruous to reward such an alien with an interim benefit like employment authorization. There is no analogous situation to this one among other USCIS benefit requests. Third, the historical practice of granting interim benefits for aliens who are not eligible for the primary or status-impacting benefit (in this case, asylum) has effectively incentivized frivolous, fraudulent, and otherwise meritless asylum filings.

Given the high volume of asylum filings, as well as the frivolous, fraudulent, and otherwise meritless filings, it follows that employment authorization associated with a pending asylum application should be curtailed, and this is the policy position of the Department. However, considering the sharp increase in encounters of aliens with criminal convictions, the current regulations definitively create an environment where criminal aliens receive the discretionary benefit of (c)(8) EAD despite the fact that they pose a risk to the national security and public safety of the United States and, for that reason, ultimately are not eligible for asylum.

When denying or referring an asylum application, USCIS does not always accurately record the specific reason for the denial or referral. For example, USCIS data may show denials based on ''criminal record'' but not ''aggravated felony'' or ''particularly serious crime.'' [268] Further, even where USCIS data tracks an option for specific grounds such as ''persecutor bar'' or ''security risk bar'' it does not seem that asylum officers consistently enter that data at adjudication. Instead, reviewing the data shows asylum officers record a determination that the alien was ''not eligible'' for asylum, since that is the only specific category of denials that is consistent year-over-year. In one example, there were zero denials based on the ''firm resettlement bar'' grounds from FY2015 to FY2019, then there was one such denial in FY2020, and then from FY2021 to FY2025 (to May 22, 2025) between 34 and 184 such denials each year. Additionally, from FY2015 to FY2025, USCIS data recorded only one single asylum application denial based on failure to appear for biometrics collection (one case from FY2015) and with asylum application volumes as high as they are, more than one alien in the last ten FYs would likely have failed to appear for a biometrics collection (*e.g.,* lost mail, neglected to update mailing address with USCIS, etc.). For all of these reasons, USCIS believes there is a concern here with incomplete data when recording the specific grounds for denying or referring an asylum application. However, DHS previously established that in FY2015, USCIS issued 15,515 denials or referrals to asylum applicants, but only 4,578 (29.5%) had one or more previously approved (c)(8) EAD.[269] However, by FY2023, USCIS issued 5,963 denials or referrals to asylum applicants, and 4,351 (72%) had one or more previously approved (c)(8) EAD.[270] In FY2024, USCIS issued 5,709 denials or referrals to asylum applicants, but 5,087 (89%) had one or more previously approved (c)(8) EAD.[271] In FY2025 (through May 22, 2025), USCIS issued 11,872 denials or referrals to asylum applicants, and 9,475 (79.8%) had one or more previously approved (c)(8) EAD.[272] As such, the population impacted by this proposed change (aliens with one or more approved (c)(8) EADs who then has their asylum applications denied) as a percentage of overall denials is clearly increasing. While DHS data cannot conclusively establish at this time how many of those aliens were denied specifically because they posed a risk to the national security and public safety of the United States, what is of paramount importance in supporting this proposed rule, is that ultimately those aliens received a (c)(8) EAD despite being ineligible for asylum (regardless of the specific grounds).

For all of these reasons, DHS proposes codify in regulation additional ineligibility grounds for the (c)(8) EAD including criminal bars to asylum under sections 208(b)(2)(A)(ii)–(iii). In addition to excluding from (c)(8) EAD eligibility any alien who has been convicted of an aggravated felony as described by section 101(a)(43) of the INA, DHS proposes to codify in regulation a bar for any alien who has been convicted of a particularly serious crime and any alien for whom there are serious reasons to believe that he or she committed a serious non-political crime outside of the United States. In doing so, DHS will emphasize the importance of public safety and national security of the United States, by safeguarding the American people and restoring integrity to the discretionary benefit of applications for (c)(8) EADs.

3. Illegal Entry

Encounters by CBP have reached record numbers in the last few years: CBP reported approximately 3.2 million enforcement actions at U.S. borders, airports, and seaports in FY 2023, and 2.9 million enforcement actions in FY 2024.[273] On January 20, 2025, the President issued E.O. 14165, *Securing Our Borders,* stating that millions of aliens from nations and regions all around the world entered the United States illegally, posing a significant threat to the public safety and national security of the United States. The surging migrant encounters between 2022 and 2023 led to burgeoning asylum application filings.

Although aliens in removal proceedings who intend to apply for asylum must do so in immigration court as a defense to removal, many aliens filed directly with USCIS instead. In fact, from 2022 to 2023, the number of affirmative asylum filings nearly doubled from 241,280 to 456,750 applications, even though USCIS lacked jurisdiction over many of these applications.[274] The total number of

[268] USCIS OPQ DATA, ''By Fiscal Year, Data Type, and Deny/Referral Reasons'' (May 22, 2025),

[269] *Id.*

[270] *Id.*

[271] *Id.*

[272] *Id.*

[273] CBP, ''CBP Enforcement Statistics,'' *https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics* (last updated May 12, 2025); *see also* ''CBP Nationwide Encounters'', *https://www.cbp.gov/newsroom/stats/nationwide-encounters.* These figures include title 8 apprehensions or inadmissible aliens processed under CBP's immigration authorities, and include individuals encountered at ports of entry who sought lawful admissions but were determined to be inadmissible. These figures also include title 42 expulsions by U.S. Border Patrol (USBP) or the Office of Field Operations (OFO).

[274] Noah Schofield and Amanda Yap, Office of Homeland Security Statistics, ''Asylees: 2023'' (Oct. 2024), *https://ohss.dhs.gov/sites/default/files/2024-10/2024_1002_ohss_asylees_fy2023.pdf. See also* USCIS, ''Asylum Division Monthly Statistics Report, Fiscal Year 2023, Oct. 2022 to Sept. 2023''

defensively filed asylum applications also nearly doubled from 2022 to 2023, from 260,830 to 488,620 applications.[275] Not surprisingly, just as asylum application filings have spiked, there has been a similarly sharp spike in filings for initial (c)(8) EADs. For example, USCIS received 262,869 initial (c)(8) EAD applications for the entirety of FY 2022. In FY 2023, that figure increased almost threefold to 802,753 initial (c)(8) EAD applications. The number of initial (c)(8) EAD filings continues to grow. In the month of January 2025 alone, USCIS received approximately 152,000 initial (c)(8) EAD applications.[276] If USCIS continues to receive initial (c)(8) EAD applications at the same volume as January 2025, USCIS would record a historical high-watermark for (c)(8) EAD applications in FY 2025 with 1.82 million applications. These parallel increases in border encounters, asylum applications, and initial (c)(8) EAD applications continue to clearly illustrate the existence of the relationship between employment authorization and a pending asylum application as a significant pull factor on illegal migration to the United States. Aliens who illegally entered the United States can become eligible to attain employment authorization in the United States during the pendency of their asylum application, which, due to a historic high of 1.45 million pending affirmative asylum cases, may take years to adjudicate. This means that the current regulations allow such aliens to access an ancillary benefit for years even if they are ultimately found ineligible for asylum.

DHS proposes disincentivizing illegal immigration by exercising its discretion to codify in regulation that any alien who enters or attempts to enter the United States at a place and time other than lawfully through a U.S. port of entry ineligible to receive an initial or renewal (c)(8) EAD. There would be limited exceptions if an alien demonstrates that he or she, without delay but no later than 48 hours after the entry or attempted entry, indicated to an immigration officer an intention to apply for asylum or expressed to an immigration officer a fear of persecution or torture; or otherwise had good cause for the illegal entry or attempted entry. Examples of good cause justifications for the illegal entry or attempted entry may include, but are not limited to, requiring immediate medical attention or fleeing imminent serious harm, but the rule would specifically state that good cause does not include entering for the evasion of U.S. immigration officers, to circumvent the orderly processing of asylum applicants at a U.S. port of entry, or for convenience. A good cause justification could also exist where an alien meets the definition of a victim of a severe form of trafficking in persons as provided in 8 CFR 214.11(a).

Likewise, aliens who are, or who were determined at any time since their most recent entry to be, UACs as defined in 6 U.S.C. 279(g)(2) would be excepted from this proposed bar.

DHS does not believe this change could be considered a ''penalty'' within the meaning of Article 31(1) of the 1951 Convention relating to the Status of Refugees, which is binding on the United States by incorporation in the 1967 Protocol relating to the Status of Refugees, because it is consistent with U.S. obligations under the 1967 Protocol.[277] The 1951 Refugee Convention, developed in the wake of World War II, serves as the basis for international refugee and asylum law and defines the term ''refugee'' [278] The United States was key in its creation, and later acceded to the 1967 Refugee Protocol which removed temporal and geographic limitations set by the 1951 Refugee Convention.[279] Article 31(1) of the 1951 Convention was written in order to ensure that refugees could effectively access international protection and to recognize that individuals fleeing persecution may engage in irregular migration. While Article 31(1) states that the alien must present themselves ''without delay'' and show ''good cause,'' these phrases are not defined in the 1951 Convention or the 1967 Protocol, and are therefore open to interpretation. This proposed change does not impact eligibility for the underlying asylum application and expressly exempts aliens who present themselves without delay, but no later than 48 hours after illegal entry, and establish good cause for entering or attempting to enter the United States at a place and time other than lawfully through a U.S. port of entry. DHS believes a 48-hour window for aliens to present themselves to authorities after illegal entry is a reasonable amount of time to provide. DHS has also provided examples of situations that may constitute ''good cause'' for the purpose of this provision and has purposely kept those broad to allow for discretion in considering the alien's circumstances that led to illegal entry.

Likewise, aliens who are now, or who were determined at any time since their most recent entry to be, UACs as defined in 6 U.S.C. 279(g)(2) would be excepted from this proposed bar.

G. Discretionary Decisions

The Secretary or the Attorney General may grant asylum to an alien who has applied for asylum if the Secretary or the Attorney General determines that the alien is a refugee.[280] However, asylum may be denied in the exercise of discretion to an alien, even those who establish statutory eligibility for the relief.[281] In exercising its discretionary authority over asylum applications, DHS examines the totality of the circumstances and all relevant factors to determine if a favorable exercise of discretion is warranted. It is the alien's burden to establish that a favorable exercise of discretion should be applied.[282]

Currently, applications for employment authorization filed by pending asylum applicants are not discretionary. 8 CFR 274a.14(a)(1). Under the proposed rule, approval of an application for employment authorization for asylum applicants would be at the discretion of USCIS. As previously discussed, this rulemaking acknowledges USCIS' past practices based on existing regulation and has provided justifications and data throughout to support the change from mandatory to discretionary approval of applications for (c)(8) EADs. The Department's proposed change to make the approval of (c)(8) employment authorization discretionary is intended to balance national security and benefit integrity with providing an avenue for asylum applicants to obtain

(Nov. 3, 2023), *https://www.uscis.gov/sites/default/files/document/data/asylumfiscalyear2023todatestats_230930.xlsx.*

[275] *Id.*

[276] USCIS Office of Performance and Quality.

[277] The United States is a party to the 1967 United Nations Protocol Relating to the Status of Refugees, January 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 268 (''Refugee Protocol''), which incorporates Articles 2 through 34 of the 1951 Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150 (''Refugee Convention''). Article 31 of the Refugee Convention instructs that contracting States ''shall not impose penalties, on account of their illegal entry or presence,'' on certain refugees ''provided the present themselves without delay to the authorities and show good cause for their illegal entry or presence.''

[278] Convention Relating to the Status of Refugees (adopted July 28, 1951, entered into force Apr. 22, 1954) 19 U.S.T. 6259, 189 U.N.T.S. 137 (''Refugee Convention'').

[279] Protocol Relating to the Status of Refugees (adopted Jan. 31, 1967, entered into force Oct. 4, 1967) 19 U.S.T. 6223, 606 U.N.T.S. 267 (''Protocol'').

[280] *See* INA sec. 208(b)(1), 8 U.S.C. 1158(b)(1) (providing that the Attorney General and Secretary ''may'' grant asylum to refugees); INA sec. 101(a)(42)(A), 8 U.S.C. 1101(a)(42)(A) (defining ''refugee'').

[281] *See* INA secs. 208(b)(1) and 240(c)(4)(A)(ii); 8 U.S.C. 1158(b)(1) and 1229a(c)(4)(A)(ii).

[282] *See Matter of Shirdel,* 19 I&N Dec. 33 (BIA 1984).

employment authorization. Similar to asylum, employment authorization for asylum applicants is not mandatory, but rather a benefit that Congress authorized and entrusted to the Secretary to administer. INA 208(d)(2), 8 U.S.C. 1158(d)(2). For (c)(8) employment authorization applications as a whole, it is within the Secretary's discretion to decide if employment authorization should be granted, and if so under what terms. DHS has broad authority to establish and amend regulations and to take other actions ''necessary for carrying out'' the Secretary's authority to administer and enforce the immigration laws. *See* INA sec. 103(a)(1) and (3), 8 U.S.C. 1103(a)(1) and (3) (granting the Secretary the authority to establish regulations and take other actions ''necessary for carrying out'' the Secretary's authority under the immigration laws); *see also* 6 U.S.C. 202 (authorities of the Secretary); *Motor Vehicle Mfrs. Ass'n of U.S., Inc.* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 42 (1983) (emphasizing that agencies ''must be given ample latitude to adapt their rules and policies to the demands of changing circumstances'' (quotation marks omitted)). The current process and minimal criteria for obtaining (c)(8) employment authorization have contributed to the growing caseload of employment authorization applications and pending asylum applications because it has incentivized aliens to file for asylum in order to obtain employment authorization. As explained throughout this rulemaking, DHS believes this reform and the others described in this rulemaking will help improve the current asylum backlog by discouraging frivolous, fraudulent, or otherwise meritless asylum filings that are filed for the sole purpose of obtaining employment authorization. This will allow USCIS to devote more of its resources to adjudicating backlog asylum cases, thus helping to clear the way for meritorious asylum applications to be received, processed, and adjudicated more quickly.

H. Recommended Approvals

DHS is removing the language referring to ''recommended approvals'' of asylum applications and the effect such notices have on the ability of some asylum applicants to seek employment authorization earlier than others. *See* 8 CFR 208.7(a)(1) and 274a.12(c)(8). Before August 25, 2020, USCIS issued a recommended approval of asylum if an asylum officer made a preliminary determination to grant asylum, but USCIS had not received the results from the mandatory identity and background checks.[283] This allowed aliens with recommended approvals to be eligible to obtain a (c)(8) EAD. Recipients of recommended approvals did not fully complete the asylum adjudication process. As of August 25, 2020, USCIS stopped issuing recommended approvals as preliminary decisions for affirmative asylum adjudications.[284]

DHS proposes to revise 8 CFR 208.7(a)(1) and 274a.12(c)(8)(ii) to align with USCIS' current policy and practice and in furtherance of E.O. 14159, *Protecting the American People Against Invasion,* and E.O. 14165, *Securing Our Borders.* E.O. 14159 directed the Secretary to ensure that employment authorization is provided accorded to the statute and is not provided to any unauthorized alien. E.O. 14165 directed the Secretary to deter and prevent the entry of illegal aliens into the United States. The primary purpose of these executive orders is to strengthen both the integrity of the immigration system and our national security posture. Because recommended approvals, issued before full screening and vetting has been completed, are in contradiction to the provisions of these executive orders, DHS proposes to remove these provisions from the regulations, codifying the current procedures.

I. Termination of Employment Authorization

As discussed above in Section III.C of this preamble, the OBBBA established a range of fees related to immigration applications or other actions. In addition, the OBBBA made isolated substantive changes related to EADs.[285] As relevant here, Congress established the following parameters for when an alien's employment authorization based on a pending asylum application, whether the initial or a renewed authorization, terminates.[286]

Accordingly, DHS is updating the provisions at 8 CFR 208.7 related to the termination of pending asylum application-based EADs to match the OBBBA. *See* proposed 8 CFR 208.7(c).[287] Based on OBBBA, pending asylum application-based employment authorization will terminate as follows, even if the expiration date specified on the employment authorization document has not been reached: (1) immediately following the denial of an asylum application by an asylum officer, unless the case is referred to an Immigration Judge; (2) on the date that is 30 days after the date on which an Immigration Judge denies an asylum application, unless the alien makes a timely appeal to the Board of Immigration Appeals; or (3) immediately following the denial or dismissal by the Board of Immigration Appeals of an appeal of a denial of an asylum application. Compared with the pre-OBBBA regulations, DHS notes that aliens will no longer have a (c)(8) EAD during the pendency of a petition for review in federal court.

As discussed throughout, benefit integrity is of utmost importance to this Administration and DHS. In the current climate of record asylum backlogs and lengthy asylum adjudication timelines, aliens are incentivized to file frivolous, fraudulent, or otherwise meritless asylum filings for the purpose of obtaining employment authorization. Allowing an alien to maintain (c)(8) employment authorization for a possibly lengthy period of time after the asylum application has been denied is further incentivizing frivolous, fraudulent, or otherwise meritless filings. By automatically terminating the (c)(8) EAD once the asylum application has been denied by USCIS or the Immigration Judge, or denied or dismissed by the Board of Immigration Appeals, DHS aims to help ensure that the benefit of a (c)(8) EAD is reserved for aliens with meritorious asylum claims, and that any extended employment authorization period does not unduly reward aliens who are ultimately found ineligible for asylum.

Asylum applications filed by a UAC must be processed according to requirements established in the TVPRA, Public Law 110–457, 122 Stat. 5044, and the *J.O.P.* Settlement Agreement. Under the terms of the *J.O.P.* Settlement Agreement, USCIS will not rely on any determination by DOJ that an alien is not a UAC.[288] Rather, USCIS exercises initial jurisdiction over the adjudication of the UAC's asylum application and renders its own jurisdictional

[283] USCIS, ''Affirmative Asylum Frequently Asked Questions,'' *https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/affirmative-asylum-frequently-asked-questions* (last updated Sept. 13, 2023).

[284] *Id.*

[285] *See* OBBBA, Title X, secs. 100003, 100010, 100011, and 100012.

[286] *Id.* at 100011(b).

[287] DHS notes that although these changes are part of this proposed rule given the connection to the rest of this rule's provisions, the OBBBA, as an intervening statute, controls in the interim until these changes are perfected in a final rule. *See Nat'l Family Planning & Reproductive Health Assn.* v. *Gonzales,* 468 F.3d 826, 829 (D.C. Cir. 2006) (''a valid statute always prevails over a conflicting regulation''); *see also Farrell* v. *United States,* 313 F.3d 1214, 1219 (9th Cir. 2002).

[288] *J.O.P.* v. *U.S. Dept of Homeland Security,* 8:19–cv–01944, Part III.D. (D. Md.) (approved Nov. 25, 2024), *https://www.ice.gov/doclib/legalNotice/jopSettlementAgreement.pdf.*

determination.[289] Accordingly, UACs who have been denied asylum by an IJ, the BIA, or a Federal court may still have a pending asylum application before USCIS because USCIS retains initial jurisdiction over asylum applications filed by UACs.[290] Therefore, if a UAC's asylum application remains pending before USCIS, which is the basis for the alien's (c)(8) EAD, his or her (c)(8) EAD will not automatically terminate even if his or her asylum application is denied by an IJ, BIA, or a Federal court.

J. Prioritizing the Adjudication of an Asylum Application Due to Derogatory Information in the Form I–765 Adjudication

In furtherance of the effort to deter frivolous, fraudulent, or otherwise meritless asylum filings for the sole purpose of obtaining employment authorization, DHS proposes to codify in regulation the authority to prioritize for adjudication an asylum application in which derogatory information is encountered during any (c)(8) EAD adjudications. For example, if USCIS discovers a national security risk while conducting security checks on a (c)(8) employment authorization applicant, USCIS may flag the corresponding asylum application so that an asylum adjudicator may more rapidly schedule the case for an interview and make a decision on the case. In conducting security checks on renewal (c)(8) applicants, USCIS may discover new convictions or arrests that warrant a prioritized asylum interview or adjudication. For example, an asylum applicant may have had no arrest record at the time he or she applied for asylum and received the initial EAD, but he or she may have since been convicted of an aggravated felony. In that instance, an EAD adjudicator could flag the case for the asylum office with jurisdiction over the application, so that the interview and adjudication could be prioritized. The outcome in both of these examples is to more rapidly adjudicate cases where applicants present risks and to reduce the time cases such as these linger in the backlog.

This significant change would allow the Department to quickly identify and efficiently remove ineligible aliens who pose a national security or public safety threat to the United States, while simultaneously decreasing the pending applications in queue.

Additionally, as referenced throughout this NPRM, the caseload of pending affirmative asylum applications has become an enormous burden on DHS and has grown to more than 1.45 million as of the end of FY 2024.[291] Alongside the growing pending affirmative asylum application caseload is the accompanying number of (c)(8) EAD applications filed by affirmative and defensive asylum applicants. Initial applications for EADs based on pending asylum applications have steadily increased over the years, with USCIS receiving 62,169 (c)(8) EAD applications in FY 2014, 261,793 (c)(8) EAD applications in FY 2017, and then seeing an explosive jump to 802,753 (c)(8) EAD applications in FY 2023.[292] In FY 2024, USCIS received 1,200,533 initial (c)(8) EAD applications.[293] In order to deter frivolous, fraudulent, or otherwise meritless asylum claims, in 2018 DHS returned to a LIFO interview scheduling approach, where DHS could refer recently filed meritless asylum applications quickly and place those aliens into removal proceedings. Similarly, this proposed provision will allow DHS to prioritize the completion of meritless asylum applications in cases where derogatory information is identified, allowing the Department to avoid adding to the exponentially increasing asylum backlog. This change could lead to slightly longer processing times for aliens without derogatory information, but the Department believes any additional time would be *de minimis* and notes that should not be the paramount concern, especially since those aliens will still remain eligible to apply for (c)(8) EADs. Rather, DHS is choosing to prioritize national security and public safety and the reduction of backlogged cases for aliens who filed frivolous, fraudulent, or otherwise meritless asylum applications, as well as aliens who are simply ineligible for asylum.

K. Corresponding DOJ Regulations

In 2003, 8 CFR 208.3 and 208.7 were duplicated in a new 8 CFR Chapter V as part of the amendments to the regulations to reflect the creation of the Department of Homeland Security and the transfer of functions between DOJ and the new DHS. *See* 68 FR 9824, 9834 (Feb. 28, 2003). At the time, DOJ duplicated the entire Part 208 into the new Part 1208 for EOIR because the provisions were ''so interrelated that no simple division of jurisdiction is possible'' and stated that DOJ expected the Departments to engage in further rulemaking to refine the division of authorities at a later date. *Id.* 9826.

In 2020, EOIR amended the EOIR provision at 8 CFR 1208.3(c)(3) regarding the form of an asylum application, including by removing the reference to a 150-day waiting period for filing for employment authorization, and reserved the EOIR provision at 8 CFR 1208.7 regarding employment authorization documents for asylum applicants. 85 FR 81698 (Dec. 16, 2020). However, as noted in section III.D.3.a of this preamble, that rule was preliminarily enjoined. *Nat'l Immigrant Justice Ctr.,* Np. 21–56 (RBW). Accordingly, the currently effective version of 8 CFR 1208.7 is no longer officially reserved. Nonetheless, 1208.7 and the reference to a 150-day wait for filing for employment authorization at 1208.3(c)(3) do not have substantive effect because DOJ has no authority to adjudicate employment authorization applications. *Cf.* 85 FR 59692, 59696 (Sep. 23, 2020) (explaining DOJ's decision to remove the specific time period after which asylum applicants may file an application for employment authorization ''to ensure that EOIR regulations do not contradict DHS regulations regarding employment authorization eligibility,'' and to reserve 8 CFR 1208.7 because ''EOIR does not adjudicate applications for employment authorization.'').

Accordingly, DHS recognizes that this rule would result in inconsistencies between the DHS regulations at 8 CFR 208.3 and 8 CFR 208.7 and the DOJ regulations at 8 CFR 1208.3 and 8 CFR 1208.7. Nevertheless, as of the effective date of this final rule, the revised language of 8 CFR 208.3 and 8 CFR 208.7 would govern DHS and its adjudications. DHS has been in consultation with DOJ on this rulemaking, and DOJ may issue conforming changes at a later date.

[289] *J.O.P.* v. *U.S. Dept of Homeland Security,* 8:19–cv–01944, Part III.C.1. (D. Md.) (approved Nov. 25, 2024), *https://www.ice.gov/doclib/legalNotice/jopSettlementAgreement.pdf.*

[290] William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Public Law 110–457 (Section 235(d)(7)).

[291] USCIS, ''All USCIS Application Petition Form Types (Fiscal Year 2024, Quarter 4)'' (Dec. 18, 2024), *https://www.uscis.gov/sites/default/files/document/data/quarterly_all_forms_fy2024_q4.xlsx.*

[292] USCIS, ''Form I–765, Application for Employment Authorization, Eligibility Category and Filing Type FY 2003–2022'' (Dec. 4, 2024), *https://www.uscis.gov/sites/default/files/document/data/i765_rad_fy03-22_annualreport_update_20241202.xlsx;* USCIS, ''Form I–765, Application for Employment Authorization, Eligibility Category and Filing Type FY2023'' (Dec. 15, 2024), *https://www.uscis.gov/sites/default/files/document/data/i-765_application_for_employment_fy23.pdf.*

[293] USCIS, ''Form I–765, Application for Employment Authorization, Eligibility Category and Filing Type FY2024'' (Dec. 16, 2024), *https://www.uscis.gov/sites/default/files/document/data/i765_application_for_employment_fy24.xlsx.*

VI. Statutory and Regulatory Requirements

A. Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 14192 (Unleashing Prosperity Through Deregulation)

E.O. 12866 (Regulatory Planning and 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. Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14192 (Unleashing Prosperity Through Deregulation) directs agencies to significantly reduce the private expenditures required to comply with Federal regulations and provides that ''any new incremental costs associated with the new regulations shall, to the extent permitted by law be offset by the elimination of existing costs associated with at least 10 prior regulations.''

The Office of Management and Budget (OMB) has designated this rule a ''significant regulatory action'' that is economically significant as defined under section 3(f)(1) of E.O. 12866. Accordingly, the rule has been reviewed by OMB.

Additionally, this rule is not an Executive Order 14192 (see 5(a)) regulatory action because it is being issued with respect to an immigration-related function of the United States. The rule's primary direct purpose is to implement or interpret the immigration laws of the United States (as described in INA sec. 101(a)(17), 8 U.S.C. 1101(a)(17)) or any other function performed by the U.S. Federal Government with respect to aliens. *See* OMB Memorandum M–25–20, ''Guidance Implementing Section 3 of Executive Order 14192, titled ''Unleashing Prosperity Through Deregulation'' (Mar. 26, 2025).

The proposed rule would impact the administrative process for issuance of EADs for aliens with a pending asylum application ((c)(8) EAD), processing timeframe for (c)(8) EAD applications, waiting period to apply for and receive a (c)(8) EAD, (c)(8) EAD validity period, and eligibility requirements for (c)(8) EADs. The rule will require changes to existing regulatory text and the creation of new regulatory text.

1. Summary of Proposed Provisions and Benefits and Costs Impacts

DHS expects that this proposed rule will generate substantial benefits. The asylum system is overwhelmed, federal adjudications resources are strained, and the affirmative asylum application backlog serves as a magnet pulling aliens into the U.S. illegally. The surge in both asylum filings and associated EADs over the past few years has created an untenable situation. This proposed rule would benefit USCIS by allowing it to operate under long-term, sustainable case processing times for initial EAD applications for asylum applicants, to allow sufficient time to address national security, public safety, or fraud concerns, and to maintain technological advances in document production and identity verification. Just as the 1994 INS rulemaking referenced below, DHS expects that this action will reduce frivolous and fraudulent asylum claims and perverse economic incentives to obtain an EAD under meritless asylum claims. 59 FR 14779 (Mar. 30, 1994); 59 FR 62284 (Dec. 5, 1994). Frivolous, fraudulent, and meritless asylum applications and related filings for employment authorization can serve as a magnet for illegal immigration and generate costs to localities, states, the national economy, and strain resources. DHS expects that these changes would reduce confusion regarding EAD requirements for aliens with pending asylum applications and the public, help ensure the regulatory text reflects current DHS policy and more faithfully implements the intent of the statute while simultaneously improving program integrity. DHS cannot currently quantify all of the potential benefits of this proposed rule.

In addition, if employers are able to hire American workers to fill the jobs the asylum applicants would hold, the change in earnings to such aliens would constitute beneficial wage and benefit transfers to American workers and would potentially pose no productivity loss or costs to employers. While it is possible that aliens without work authorization could require assistance from their social and support networks, which could include public entities, there could be a counterbalance; as this rule potentially will reduce immigration, there could be less of an economic strain on states, local government, and non-governmental organizations, in terms of any public assistance and resources that are currently provided to asylum applicants. Furthermore, DHS anticipates this proposed rule would decrease illegal migration and fraudulent claims for asylum applications and EADs.

Additional, unquantifiable benefits resulting from this proposed rule include reduction and prevention of potential fraudulent cases, providing consistency and clarity to aliens seeking asylum, and streamlining the initial USCIS (c)(8) EAD request process for sustainable case processing times. DHS cannot estimate these potential indirect impacts (whether costs, benefits, transfers) or second order effects and beyond, as they are beyond the scope of this analysis. This rulemaking seeks to reduce frivolous, fraudulent, and meritless asylum applications and their associated applications for (c)(8) EADs while improving the administrative process for issuance of employment authorization documents for aliens with meritorious asylum application at USCIS.

Requiring aliens to submit biometrics for both initial and renewal requests for employment authorization would enable DHS to vet an alien's biometrics against government databases to determine if he or she matched any criminal activity on file, to verify the alien's identity, and to facilitate card production. In addition, biometrics collection enables DHS to confirm that individuals are not utilizing multiple identities or that multiple individuals are not utilizing one identity. Lastly, from biometrics collection DHS would increase program integrity by ensuring that only eligible aliens who continued to pursue asylum were applying for and obtaining work authorization. This would also generally provide a benefit for the public; in that it increases transparency pertinent to application and filing requirements. As discussed in the preamble, the asylum program has been subject to identity fraud concerns historically.

The impacts of this proposed rule include both potential distributional effects (which are transfers) and costs. The potential distributional impacts fall on the asylum applicants who may be delayed in entering the U.S. labor force or who may not obtain an EAD due to being ineligible (*e.g.,* aggravated felon, serious non-political crime, etc.) or due to a processing pause. The potential distributional impacts (transfers) would be in the form of lost opportunity to earn compensation (wages and benefits). A portion of this lost compensation might be transferred from asylum applicants to others that are currently employed in the U.S. labor force, possibly in the form of additional hours worked or overtime pay. A portion of the impacts of this rule may also be borne by companies that would have

hired the asylum applicants had they been eligible for an EAD or in the labor market earlier. However, if the affected employer were unable to find available workers, these companies could incur a cost to productivity and potential profit.

Companies may also incur opportunity costs by having to choose the next best alternative to immediately filling the job the asylum applicant would have filled. USCIS does not know what this next best alternative may be for those companies. As a result, USCIS does not know the portion of overall impacts of this rule that are transfers or costs. If companies can find replacement labor for the position the asylum applicant would have filled, this rule would have primarily distributional effects in the form of transfers from asylum applicants to others already in the labor market (or workers induced to return to the labor market). USCIS acknowledges that there may be additional opportunity costs to employers such as additional search costs. However, if companies cannot find a reasonable substitute for the labor an asylum applicant would have provided, the effect of this rule would primarily be a cost to these companies through lost productivity and profits.

USCIS uses the changes to earnings to asylum applicants as a measure of the overall impact of the rule—either as distributional impacts (transfers) or as a proxy for businesses' cost for lost productivity. It does not include additional costs to businesses for lost profits and opportunity costs or the distributional impacts for those in an applicant's support network. The lost compensation to these asylum applicants could range from $34.6 billion to $126.6 billion annually (undiscounted) depending on the wages the asylum applicant would have earned. The 5-year total discounted lost compensation to asylum applicants at 3 percent could range from $155.4 billion to $568.6 billion and at 7 percent could range from $135.5 billion to $495.8 billion (FY 2025 through FY 2029).

The quantified estimates may be overstated, as they assume that without this rule (*i.e.,* under the baseline) the EAD validity period would be longer than is currently permitted.[294] Since USCIS has reduced the maximum EAD validity for aliens with pending asylum applications to 18 months, recipients must renew more often, which could result in fewer pending asylum applicants authorized to work over the 5-year period of analysis. This reduction would result from attrition in renewal applications and more frequent vetting.

There could be tax impacts pertinent to earnings changes. Asylum applicants who could be delayed or precluded from obtaining an EAD may generate forgone federal and state taxes. However, as was noted above, the strain on resources that could be mitigated due to the effects of this rule could counterbalance some or all of the tax losses, if there are any. Additionally, if the earnings are transferred to American workers, there may no loss of taxes.

This rule could possibly result in reduced opportunity costs to the Federal Government. Since the *Rosario* court order, 365 F. Supp. 3d 1156 (W.D. Wash. 2018), compelled USCIS to comply with the 30-day processing timeframe provision in FY 2018, USCIS has redistributed its adjudication resources to work up to compliance. By extending the 30-day processing timeframe to 180 days, it is possible that resources could be reallocated, which could have the effect of reducing delays in processing status-granting benefit requests, and avoiding costs associated with hiring additional employees. However, there are many factors that could influence such processing. Additionally, if asylum filings decline, as this rule generates a disincentive to meritless claims with the goal of obtaining an EAD, then the public and the Federal Government could experience operational and cost efficiencies as is pertinent to adjudicating less asylum claims. DHS does not rule out that there could be resources allocated to other operational areas.

Table 4 provides a detailed summary of the regulatory changes and the expected impacts of the proposed rule's provisions. USCIS estimates the primary impact of the rule would result from a pause in accepting all initial (c)(8) EADs applications until USCIS affirmative asylum applications processing time reaches a 180-day average (estimated in Module 1, below). Additionally, USCIS provides monetized impacts for provisions that would affect EAD applicants (for initial and renewal EADs) when the pause is lifted (estimated in Module 2, below). However, USCIS does not include Module 2 in the total rule impact, because the Module 1 impacts (pause EADs) accounts for impacts to all new EAD applicants. To include Module 2 would be double counting the impacts for the same population. Where a monetized figure is presented, it is based on a 7 percent annualized average, and the annual population is the midpoint of a high-low range.

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[294] Effective December 5, 2025, USCIS reduced the maximum EAD validity period for aliens with pending asylum applications to 18 months. *See* USCIS, Policy Alert, ''Updating Certain Employment Authorization Document Validity Periods'' (Dec. 4, 2025), *https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20251204-EmploymentAuthorizationValidity.pdf.*

Table 4. Summary of Proposed Provisions and Estimated Impacts.		
Proposed Provision (proposed CFR)	**Proposed Regulatory Changes**	**Estimated Impact of Regulatory Change**
Amend 8 CFR 208.3(c)(3), Form of application	Asylum applications filed with USCIS must be in accordance with § 103.2(a)(7) of this chapter and the form instructions. If the application does not comply with the requirements, it will be deemed incomplete and USCIS will reject and return the application; An application rejected and may be resubmitted.	Annual Population: 503,000. Impact: Unknown. Quantitative estimate: Not Estimated. Qualitative description: USCIS would gain operational efficiency and the general public would benefit because it would essentially instill one set of rules governing the submission of benefit requests, as opposed to the current state with two materially different sets of rules. This will generate more efficient and effective decisions on asylum applications as officers are currently required to obtain omitted information at interview.
Require Biometrics for Asylum EAD applications	In General. Subject to restrictions contained in sections 208(d) and 236(a) of the Act, an applicant for asylum will be eligible pursuant to §§ 274a.12(c)(8) and 274a.13(a) of this chapter to request employment authorization; The applicant must request employment authorization on the form by USCIS and according to the form instructions, and, if required by USCIS, must submit biometrics at a scheduled biometrics services appointment, in accordance with § 103.2(b)(9) of this chapter.	Population: 503,000. Impact type: costs to asylum applicants and USCIS. Quantitative estimate: Not Estimated. Qualitative description: There would be a travel and time cost to aliens to submit biometrics for affected aliens as well as costs to USCIS to collect biometrics. Benefit: Biometrics collections will enable DHS to minimize known identity fraud concerns by verifying that aliens are not utilizing multiple identities or that multiple aliens are not utilizing one identity; will enable DHS to vet an alien's biometrics to determine matches to any criminal activity on file, to verify the alien's identity, and to facilitate card production[295]
Increasing the wait period for initial EAD filing from 180 to 365 days	Except in the case of an alien who filed an asylum application prior to January 4, 1995, requires employment authorization application to be submitted no earlier than 365 calendar days after the date on which a complete	Quantitative (Module 2 results): Population impacted: Provision would cover total population, but DHS estimates impacts will accrue to about 224,000 defensive cases. Impact type: Transfers, taxes, filing costs.

	asylum application is submitted. EAD applications filed before waiting period will be rejected. If an asylum application has been rejected and returned as incomplete the 365 day waiting period will commence upon the date of receipt of the complete asylum application.	Quantitative estimate: Earnings change: $6.3 billion with Federal tax impact of $0.66 billion; The earnings and taxes lost could represent a transfer if replacement labor is available for the delayed period. Qualitative description: If the average USCIS processing time for adjudicating asylum applications is less than or equal to 180 days for a period of 90 consecutive days, USCIS will accept (c)(8) EAD applications according to the proposed 365 calendar-day waiting period for pending asylum applications. For the defensive population not subject to proposed bars, there may be a minor form time burden increase of 0.34 hours. Benefit: Increasing the period for filing from 180 days to 365 days permits USCIS to focus resources on the underlying asylum applications which, if adjudicated first, obviates the need to adjudicate the pending (c)(8) EAD applications. Further, the increase may reduce or limit fraudulent, frivolous, and meritless asylum applications (e.g., knowing the alien must wait 1 year to file for an EAD, etc.).
Increasing USCIS EAD processing timeframe from 30 to 180 days	Processing Timeframe for initial applications for employment authorization received on or after the effective date of the final rule under this section, USCIS will have 180 days to adjudicate an initial application for employment authorization, except for those applications requiring additional review for background checks or vetting.	Quantitative (Module 2 results): Population impacted: Provision would cover total population, but DHS estimates impacts will accrue to about 224,000 defensive cases. Impact type: costs, transfers, taxes Quantitative estimate: Incorporated with wait time impacts in the preceding row. Qualitative description: By extending the 30-day (c)(8) EAD adjudications timeframe to 180-day, USCIS would be able to shift resources from the (c)(8) EAD workload to adjudications with backlogs. Additionally, having more than 30 days to adjudicate the (c)(8) EAD would provide USCIS additional time for screening and vetting, which would increase program integrity and help identify national security and public safety threats, which are significant benefits to the immigration system.
EAD Eligibility Bars: Proposed criteria for EAD ineligibility for asylum applicants	Changes to asylum applicants who are ineligible for employment authorization. As is detailed fully in section II. B. 2. E-F, including exceptions and circumstances, an applicant for asylum is not eligible for employment authorization if:	Quantitative (Module 2 results): Population: 96,000 Impact type: costs, transfers, taxes Quantitative estimate: Earnings change: $15.1 billion with Federal tax impact of $1.6 billion; The earnings and taxes lost could represent a transfer if replacement labor is available for the delayed period.

	(A) There is reason to believe that the alien may be barred from a grant of asylum due to significant criminal grounds; (B) An asylum officer or an Immigration Judge has denied the alien's application within the 365 calendar-day waiting period or before the adjudication of the initial request for employment authorization; (C) The applicant filed their asylum application on or after the effective date of the final rule and filed the application after the 1-year filing deadline; (D) The applicant is an alien who entered or attempted to enter the United States at a place and time other than lawfully through a U.S. port of entry.	Benefit: Prohibiting approval of (c)(8) EAD applications to aliens who are ineligible for asylum, including aliens convicted of aggravated felonies or particularly serious crimes, aliens who committed serious non-political crimes outside the U.S., and where the alien filed his or her asylum application after the one year filing deadline would increase program integrity by ensuring that criminal aliens are not granted immigration benefits, including work authorization. This would also reduce or limit a substantial incentive for filing fraudulent, frivolous, and meritless asylum applications (e.g., knowing an alien with any one of these types of crimes would be denied an EAD, etc.).
USCIS may use derogatory information from an EAD application to prioritize asylum application, denying asylum sooner	Derogatory information. If USCIS discovers derogatory information during the adjudication of an application for employment authorization for an alien with a pending asylum application, USCIS may prioritize the alien's affirmative asylum application for adjudication.	Population: Unknown. Impact type: costs, transfers Qualitative Description: Costs and Transfers: If individuals are denied an EAD, it would likely reduce their earnings and tax payments, which could be transfers to other American workers. Benefits: Would benefit USCIS processing because currently USCIS processes asylum applications in a "last in, first out" order. This will increase efficiency (e.g., denying asylum applications sooner, reducing asylum backlog, etc.) and is a logical and rational way to handle cases (e.g., adjudicating all pending benefit requests based on the same derogatory information). This proposed prioritization would likely result in applicants that would have been denied asylum to be brought in for processing faster.
USCIS may pause the issuance of EADS	(2)(i) Pausing and Restarting Acceptance of Initial Applications for Employment Authorization. Beginning on the effective date of the final rule and anytime thereafter, if the average USCIS processing time for adjudicating affirmative asylum applications is greater than 180 days for all applications for asylum currently pending before USCIS for a period of 90 consecutive days, USCIS will not accept initial applications for	Population: 503,000. Impact type: earnings change, taxes, cost-savings. Quantitative estimate: Earnings change of $70.4 billion and Federal government taxes of $7.4 million; aliens would experience a cost-savings from not filing.[296] Qualitative: Pausing acceptance of (c)(8) EAD applications when the average USCIS processing time for adjudicating asylum applications is greater than 180 days for a

	employment authorization. If the average USCIS processing time for adjudicating affirmative applications is less than or equal to 180 days for a period of 90 consecutive days, USCIS will again accept initial applications for employment authorization. The preamble provides information concerning the basis for decision of pause and announcement of pause and publication of processing times.	period of 90 consecutive days, permits USCIS to focus resources on the underlying asylum applications which, if adjudicated first, obviates the need to adjudicate the pending (c)(8) EAD applications. Further, tethering (c)(8) EAD application acceptance to asylum processing times may reduce or limit a substantial pull factor for filing fraudulent, frivolous, and meritless asylum applications (e.g., knowing the alien must wait 1 year to file for an EAD, etc.). Finally, the tethering will eliminate the potential that USCIS will again find itself in the situation it is currently in where large asylum backlogs attract frivolous, fraudulent, or otherwise meritless asylum filings seeking ancillary benefits. The implementation of this tether will permanently eliminate the possibility that asylum backlogs may serve as a magnet attracting illegal immigration.
Additional requirements.	Renewal. Employment authorization shall be renewable, in increments to be determined by USCIS, for the continuous period of time necessary for the asylum officer or Immigration Judge to decide the asylum application and, if necessary, for completion of any administrative or judicial review. The alien must request renewal of employment authorization on the form and in the manner prescribed by USCIS and according to the form instructions, with the appropriate fee, and, if required by USCIS, must submit biometrics at a scheduled biometrics services appointment in accordance with § 103.2(b)(9) of this chapter. USCIS requires that an alien establish that he or she has continued to pursue an asylum application before an Immigration Judge or sought administrative or judicial review. For purposes of employment authorization, pursuit of an asylum application is established by presenting one of the following, depending on the stage of the alien's immigration proceedings: (1) If the alien's case is pending in proceedings before the Immigration Judge, and the alien wishes to continue to pursue his or her asylum application,	Quantitative: Impact type: transfers, taxes Population: Full population unknown. Quantitative: DHS estimates impacts for about 160 affirmative asylum denials with EADs; $0.01 billion in earnings and $0.001 in Federal taxes. . Qualitative: Modifying the requirements for renewal (c)(8) EAD applications, including adding the requirement to submit biometrics, but also requiring that the alien establish he or she continued to pursue asylum, would increase program integrity by ensuring that only eligible aliens who continued to pursue asylum were applying for and obtaining work authorization. This would also generally provide a benefit for the public by increasing transparency on application and filing requirements. USCIS believes this update would also reduce or limit a substantial incentive for filing fraudulent, frivolous, and otherwise meritless asylum applications (e.g., knowing an alien must affirmatively establish that he or she continued to pursue asylum and could not simply repeatedly file a renewal (c)(8) I-765s solely to obtain employment authorization).

	a copy of any asylum denial, referral notice, or of the charging document placing the alien in such proceedings; (2) If the Immigration Judge has denied asylum, a copy of the document issued by the Board of Immigration Appeals to show that a timely appeal has been filed from a denial of the asylum application by the Immigration Judge; or (3) If the Board of Immigration Appeals has denied or dismissed the alien's appeal of a denial of asylum, or sustained an appeal by DHS of a grant of asylum, a copy of the petition for judicial review or for habeas corpus pursuant to section 242 of the Act, date stamped by the appropriate court. (c) *Termination.* In addition to the termination and revocation provisions under 8 CFR 274a.14, employment authorization granted under this section shall terminate as follows, even if the expiration date specified on the employment authorization document has not been reached: (1) immediately following the denial of an asylum application by an asylum officer, unless the case is referred to an Immigration Judge; (2) on the date that is 30 days after the date on which an Immigration Judge denies an asylum application, unless the alien makes a timely appeal to the Board of Immigration Appeals; or (3) immediately following the denial or dismissal by the Board of Immigration Appeals of an appeal of a denial of an asylum application. (c)(8) An alien who has a pending application for asylum or withholding of deportation or removal pursuant to part 208 of this chapter. Employment authorization may be granted according to the provisions of §208.7 of this chapter in increments to be determined by USCIS and will expire on a specified date.	With respect to the termination provisions, with few exceptions, immediately and automatically terminating (c)(8) EADs upon denial of the asylum application by either USCIS or an Immigration Judge, rather than 60 days after denial or after EAD expiration, whichever is later, would benefit USCIS operationally since the change removes the separate requirement for terminating the EAD upon denial of the asylum application. This is a significant benefit for USCIS given asylum applications have a low associated filing fee. As such, it would help USCIS to reduce the number of notices that must be issued when adjudicating applications with low associated filing fees. DHS notes there would be different impacts to earnings for asylum seekers who receive denials via USCIS or an Immigration Judge in terms of timing of losing work authorization.

	(1) The approval of applications filed under § 274a.12(c) is within the discretion of USCIS. Where economic necessity has been identified as a factor, the alien must provide information regarding his or her assets, income, and expenses. (2) An application for an initial employment authorization or for a renewal of employment authorization filed in relation to a pending claim for asylum or withholding of removal must be filed and adjudicated in accordance with § 208.7.	Qualitative: By making this a discretionary adjudication, USCIS would generally not approve EADs for aliens with criminal arrests and convictions, which in turn: promotes the integrity of the immigration system, makes U.S. workplaces safer, and removes a pull factor for aliens to remain in the United States (e.g., whether the alien warrants a favorable exercise of discretion).

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Consistent with OMB Circular A–4, Table 5 presents the prepared A–4 accounting statement showing the costs and transfers associated with this proposed regulation. We calculate the midpoint between the minimum estimate and maximum estimate as the primary estimate of this proposed rulemaking.

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[295] *See* Office of the Inspector General, DHS, OIG–16–130 ''Potentially Ineligible Individuals Have Been Granted U.S. Citizenship Because of Incomplete Fingerprint Records'' (Sept. 8, 2016), *https://www.oig.dhs.gov/reports/2016-09/potentially-ineligible-individuals-have-been-granted-uscitizenship-because.*

[296] DHS caveats that the quantified estimates are currently overstated due to the change in the maximum EAD validity period for aliens with pending asylum applications to 18 months. USCIS will consider the recent change and incorporate updates where appropriate in the final rule to reflect this change.

Table 5. OMB A-4 Accounting Statement ($ billions, 2023) **Period of analysis: FY 2025 through FY 2029**				
Category	**Primary Estimate**	**Minimum Estimate**	**Maximum Estimate**	**Source Citation (regulatory impact analysis (RIA), preamble, etc.)**
BENEFITS				
Monetized Benefits	Not estimated			RIA
Annualized quantified, but un-monetized, benefits	N/A	N/A	N/A	RIA
Unquantified Benefits	This proposed rulemaking stands to generate substantial benefits, as it will increase the integrity of the immigration system; specific potential benefits are summarized to include: • Streamlining the USCIS (c)(8) EAD request process for sustainable case processing times while allowing ample time to conduct thorough review. • A reduction and prevention of potential fraudulent cases. • Provision of consistency and clarity to aliens and the public. • Improve criminal history record information (CHRI) for aliens; implement and maintain technological advances in document production and biometric identity verification for asylum applicants seeking (c)(8) EADs. • Disincentivizing frivolous, fraudulent, or otherwise meritless asylum applications; with the goal of filing an asylum claim solely to achieve work authorization. • USCIS backlog reduction and mitigating the			RIA, Preamble

	unsustainable current situation and trend for USCIS with respect to (c)(8) EAD processing (driven by a surge in filings over the past few years), which could help USCIS obtain shorter processing times. • Possibility of efficiency gains and cost-savings through fewer adjudications of asylum and (c)(8) EAD petitions and the potential shift of resources to other areas of service that may need resources.				
COSTS					
Annualized monetized costs (discount rate in parenthesis)	(7%)	$35.2	$0	S120.9	RIA
	(3%)	$36.2	$0	S124.1	
Annualized monetized cost savings (discount rate in parenthesis)	(7%)	-$0.07	-$0.12	-$0.03	RIA
	(3%)	-$0.07	-$0.12	-$0.03	
Qualitative (unquantified) costs	• Costs for requiring biometrics include time burden, travel expenses for aliens, and costs for USCIS. • Costs for training USCIS staff on new provisions and eligibility criteria and additional review time per application due to additional criteria. • Employer and alien costs for renewing EADs applicants that may lose their work authorization under the proposed eligibility criteria. • Employer costs to replace current employees who may no longer be eligible for employment authorization when renewing their EAD.				RIA
TRANSFERS					
Annualized monetized transfers: compensation	(7%)	$35.2	$0	S120.9	RIA
	(3%)	$36.2	$0	S124.1	
From whom to whom?	From alien workers, who would not receive employment authorization, to American workers.				RIA
Annualized monetized transfers: taxes	(7%)	$3.7	$0	$12.8	RIA
	(3%)	$3.8	$0	$13.1	

From whom to whom?	Earnings changes may cause a reduction in employment taxes from employers and the alien employees to the Federal Government; however, the jobs acquired by American workers in place of the aliens could offset some or all of this reduction.	RIA
Category	*Effects*	
Effects on State, local, and/or tribal governments	The proposed rule may mitigate illegal immigration costs on strained resources, which could fiscally benefit state and local governments.	RIA
Effects on small businesses	None expected	RFA
Effects on wages	None expected	RIA
Effects on growth	None expected	RIA

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2. Background and Purpose

The proposed rule would impact the process for issuance of EADs for aliens with a pending asylum application (c)(8) EAD, processing timeframe for (c)(8) EAD applications, waiting period to apply for and receive a (c)(8) EAD, (c)(8) EAD validity period, and eligibility requirements for (c)(8) EADs. The rule will require changes to existing regulatory text and the creation of new regulatory text.

The purpose of this proposed rulemaking is for DHS to be able to balance its overall adjudication burdens with available resources by ensuring that initial (c)(8) EAD filings are not creating incentives for aliens to file frivolous, fraudulent, or otherwise meritless asylum applications. Thus, this rule proposes to introduce a number of additional provisions to help with the issues of benefit and program integrity, national security, public safety, and resource strain at USCIS. DHS expects the proposed changes would reduce confusion regarding EAD requirements for aliens with pending asylum claims and the public and help ensure the regulatory text reflects current DHS policy and more faithfully implements the intent of the statute while simultaneously improving program integrity.

3. Baseline and Population

The proposed rule will impact the process for issuance of employment authorization documents for aliens with a pending asylum application (c)(8) EAD, aliens with denied asylum claims who have a valid EAD at the effective date of the final rule, processing timeframe for (c)(8) EAD applications, waiting period to apply for and receive a (c)(8) EAD, (c)(8) EAD validity period, and eligibility requirements for (c)(8) EADs. The rule will require changes to existing regulatory text and the creation of new regulatory text.

The baseline in this NPRM represents a world absent this proposed regulation, which is a continuation of current policy and trends. The impacts estimated in this RIA are relative to this baseline.

The population affected by this proposed rulemaking is the asylum requesting population whose asylum applications are pending. While their asylum applications are pending, this population can request employment authorization, colloquially known as a (c)(8) EAD. For this NPRM, to project a potential future (c)(8) EAD population we need to account for any historical patterns. Table 6 presents the historical perspective of the initial (c)(8) EAD population. On average we can see that this population grew at about a 39.26 percent rate over the nine-year span of period FY 2016 through FY 2024. One note is the growth rates of FY 2022 through FY 2024 were higher than that of period FY 2016 through FY 2024. Excluding the high-growth years, over the five-year period FY 2017 through FY 2021, the growth rate was 7.30 percent. For this NPRM, we take this rate as the average longer term growth rate of this population.

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Table 6. Historical USCIS Initial (c)(8) EAD Requests (FY 2017 through FY 2024).

FY	(c)(8) EAD Receipts	% Change
2016	169,967	-
2017	261,793	54.03
2018	262,995	0.46
2019	216,287	-17.76
2020	234,079	8.23
2021	214,565	-8.34
2022	262,869	22.51
2023	802,753	205.38
2024	1,200,533	49.55
Total	3,455,874	-
Average	243,789	39.26
FY 2017 through FY 2021 Total	**1,189,719**	**-**
FY 2017 through FY 2021 Average	**237,944**	**7.30**

Sources: USCIS, Office of Performance and Quality, C3 Consolidated/ELIS, queried Nov. 2022, Nov. 2023, and Nov. 2024. Notes: Numbers rounded.

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DHS cannot predict whether the FY 2022 through FY 2024 growth rates represent a structural change as immigration policies and other conditions domestically and internationally could change and potentially affect asylum applicants. Given this uncertainty, in projecting a potential future (c)(8) EAD population we account for two possibilities. We first project a scenario (''low scenario'' in Table 7) where we assume the levels of the high-growth years driven by unique factors, policies, or some influence of both that would not continue apace into the future. We also rely on a ''high scenario'' where the high-growth years might constitute a sustainable change in trend. As such, for the low scenario we take the FY 2021 (c)(8) EAD data point, which is 214,565, then apply the assumed longer term growth rate of 7.3 percent to arrive at our first projected year, FY 2025 of Table 7. Then we take the projected FY 2025 and repeat for the remaining projected years. For the high scenario, we take the average of the high-growth years, average of FY 2022 through FY 2024 in Table 6,[297] which is 755,385, then apply the assumed longer term growth rate of 7.3 percent to arrive at our first projected year, FY 2025. Then we take the projected FY 2025 and repeat for the remaining projected years. Lastly, we take the average of the low and high scenarios (the ''midpoint scenario'' in Table 7) to arrive at a midpoint scenario population.

Table 7 presents the projected baseline population for FY 2025 through FY 2029. We set our projection period to 5 years as we cannot predict with certainty longer term trends given that immigration policies and other conditions domestically and internationally could rapidly change affecting aliens with pending asylum applications.

[297] DHS cannot accurately identify nor predict which conditions specifically caused the population levels in recent years. Given this uncertainty (*i.e.,* not knowing which levels would persist), we take the average of the outlier years as our starting point in the projected high population scenario. Causal inference on the 'push' factors of world migration patterns is beyond the scope of this rulemaking.

Table 7. Projected USCIS Initial (c)(8) EAD Receipts (FY 2025 through FY 2029).

FY	Low Scenario	Midpoint Scenario	High Scenario
2025	230,228	520,378	810,528
2026	247,035	558,366	869,697
2027	265,068	599,126	933,185
2028	284,418	642,863	1,001,307
2029	305,181	689,792	1,074,402
5-yr. Total	**1,331,931**	3,010,525	4,689,119
5-yr. Average	**266,386**	602,105	937,824

Source: USCIS analysis; Totals may not sum due to rounding.

The sub-population components pertinent to specific aspects of this rulemaking will be presented in Section VI.A.6.

4. Wages and Opportunity Costs of Time

To monetize the impacts of this proposed rule, we need information on potential wages that the baseline population could earn or information on their opportunity cost of time. To estimate potential earnings impacts, USCIS makes uses of U.S. Bureau of Labor Statistics (BLS) data as follows. We will use the mean hourly wage for all occupations of $31.48 as an upper bound and the 10th percentile wage of $13.97 as a lower bound.[298] For a more encompassing measure of compensation, we will use a benefits multiplier of 1.45 applied to the respective mean and 10th percentile wages, resulting in average hourly total compensation rates of $45.65 and $20.26, respectively.[299]

As it relates to potential impacts to labor earnings, DHS also estimates a potential tax effect. It is challenging to quantify income tax impacts of employment in the labor market scenario because individual tax situations vary widely, but DHS estimates 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 1.45 percent, respectively).[300] With both the employee and employer paying their respective portion of Medicare and Social Security taxes, the total estimated accretion in 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 calculated by multiplying the earnings impact by the employment tax rate of 15.3 percent, and dividing the resulting product by the benefits burden multiple of 1.45. DHS is unable to quantify other tax transfer payments, such as those applicable to Federal income taxes and State and local taxes.

5. Forms, Time Burdens, and Fees

Until recently, there were no fees associated with requesting asylum or an initial (c)(8) EAD, and no biometrics collection requirement associated with (c)(8) EAD applications. USCIS recently implemented statutorily-mandated filing fees, including a $100 non-waivable filing fee for the asylum application and $100 annual fee for every year the applicant's asylum application is pending, as well as a $550 non-waivable filing fee for the initial (c)(8) employment authorization application.[301] The proposed rule establishes a biometrics collection applicable to (c)(8) EAD requests, but it is not imposing a service fee via this rulemaking. DHS explained other impacts linked to biometrics collection in the final section of this analysis. This rulemaking proposes changes to the forms I–589 and I–765, forms relevant to the baseline population. The current form burdens are 11 hours for Form I–589 and 4.38 hours for Form I–765.[302] DHS estimates that the future filing time for Form I–765 will be 4.72 hours. In the impact estimates, DHS will rely on this projected burden, noting that it represents the maximum impact. The

[298] BLS, Occupational Employment Statistics, ''May 2023 National Occupational Employment and Wage Estimates,'' All Occupations (00–0000), *https://www.bls.gov/oes/2023/may/oes_nat.htm#00-0000* (last updated Apr. 3, 2024). The 10th, 25th, 75th, and 90th percentile wages are available in the downloadable XLS file link.

[299] Calculation: 1.45 (rounded) = Hourly Total compensation ($46.84) ÷ Hourly Wages and Salaries ($32.25). Calculation: $31.48 × 1.45 = $45.65 (rounded). $13.97 × 1.45 = $20.26 (rounded). BLS, Economic News Release, ''Employer Costs for Employee Compensation—September 2024'' (Dec. 17, 2024), Table 2. Employer Costs for Employee Compensation for civilian workers by occupation and industry group, *https://www.bls.gov/news.release/archives/ecec_12172024.pdf.*

[300] The various employment taxes are discussed in more detail at *https://www.irs.gov/businesses/small-businesses-self-employed/understanding-employment-taxes. See* IRS, ''Publication 15, Circular E, Employer's Tax Guide,'' *https://www.irs.gov/pub/irs-pdf/p15.pdf* for specific information on employment tax rates. *See* Quentin Fottrell, MarketWatch, ''More Than 44% of Americans Pay No Federal Income Tax'' (Aug. 28, 2019), *https://www.marketwatch.com/story/81-million-americans-wont-pay-any-federal-income-taxes-this-year-heres-why-2018-04-16.* Relevant calculation: (6.2 percent Social Security + 1.45 percent Medicare) × 2 employee and employer losses = 15.3 percent total estimated public tax impact.

[301] *See* On Oct. 30, 2025, USCIS paused the implementation of the annual asylum fee, as required by an order issued in in *Asylum Seeker Advocacy Project* v. *United States Citizenship and Immigration Services, et al.,* SAG–25–03299 (D. Md.). That order does not affect this rule. *See Asylum Seekers Advocacy Project* v. *United States Citizenship and Immigration Svcs.,* No. 25–03299 (D.Md. Oct. 30. 2025). Per statute, 50 percent of the asylum application fee is credited to DHS. None of the annual fee revenue is credited to USCIS and 25-percent of the (c)(8) employment authorization application fees are credited to USCIS.

[302] USCIS, DHS, ''Instructions for Application for Asylum and for Withholding of Removal (Form I–589),'' OMB No. 1615–0067 (expires Sept. 30, 2027), *https://www.uscis.gov/sites/default/files/document/forms/i-589instr.pdf* (last updated Jan. 20, 2025); USCIS, DHS, ''Instructions for Application for Employment Authorization (Form I–765),'' OMB No. 1615–0040 (expires Sept. 30, 2027), *https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf* (last updated Jan. 20, 2025).

reason is that some aliens file electronically, and the burden for electronic filings will be less, changing from 4.12 hours to 4.35 hours.[303]

In the impact estimates, DHS accounts for costs and cost-savings applicable to changes involving filing for- and not filing for, an EAD, but does not include the recent statutorily-mandated filing fees in these estimates.

6. Monetized Impacts (Costs, Benefits, and Transfers)

a. Variables and Descriptions

In this section DHS develops, estimates, quantifies, and monetizes potential economic impacts that could accrue to the proposed rule, although not all impacts can be fully quantified. The primary effect will be changes to labor compensation earnings that asylum applicants who have obtained (c)(8) EADs could incur. The changes to earnings would likely comprise delayed or forgone earnings to EAD holders; however, some portion, or the totality of the aggregate earnings change could also constitute transfers to American workers without productivity loss to employers. DHS acknowledges that there would be impacts applicable to (c)(8) renewal filings, but to scope the analysis, we focus on the primary impact of an initial approved (c)(8) EAD. At the time of this analysis, June 2025, an initial (c)(8) EAD is authorized for five years, which is the main basis for the analysis period.[304] In addition to earnings impacts there could be tax impacts as well as costs and cost-savings to asylum applicants not filing for EADs in the future and changes to the form burden. These effects are also quantified, to the extent possible.

The monetized estimated impacts are developed in two modules. Module 1 covers the impacts applicable to a pause in the issuance of initial (c)(8) EADs until USCIS affirmative asylum applications processing time reaches a 180-day average. Module 2 covers the provisions related to EAD eligibility, ending some EADs early, and well as the proposed changes to the (c)(8) filing time and process time protocol. The changes to EAD eligibility requirements for initial (c)(8) EAD applicants would become applicable only when the pause, covered by Module 1, is lifted. The impacts are parsed this way to avoid double counting, as an issuance pause would comprise the largest impact and encompass any effects that could be incurred under an issuance protocol (Module 2). There are numerous metrics and inputs utilized in the analysis, and for the purpose of brevity, we will utilize letter abbreviations for many, which will be introduced when applicable.

To support the economic impact estimates for this proposed rule, DHS analyzed data provided by the USCIS Office of Performance and Quality. The data set links information on asylum filings with concomitant (c)(8) EAD filings, comprising 2.26 million records for the full period FY 2022 through FY 2024.[305] It fully embodies USCIS affirmative asylum data, and while it includes EAD data linked to defensive asylum, data regarding defensive asylum outcomes are not fully available, as DHS cannot concatenate such data between USCIS and EOIR, at this time.

The population (POP) at its broad level is the total population of initial (c)(8) EAD approvals, as denials would not be impacted. A first phase of the analysis parses out and reports the specific populations that the rule could impact, as is shown in Table 8. Under both Module 1 and 2 the broad population could be impacted, but there is an important distinction in the manner in which the impacts are estimated. If there is a pause in the issuance of initial (c)(8) EADs (*i.e.,* Module 1), the entire population, initial EAD filings for both pending affirmative and defensive asylum would be impacted, as no pertinent individuals would obtain an EAD. In contrast, when the pause is lifted (*i.e.,* Module 2), DHS assumes that initial (c)(8) EADs would be issued primarily for pending defensive asylum applicants. This is because the pause is lifted only when the processing time for affirmative asylum processing is less than 180 days, and thus prior to the end of the proposed 365-day waiting period for an initial (c)(8) EAD. An asylum approval would grant work authorization, and a denial would make the individual ineligible for work authorization.

As is explained in the preamble, given the scope of the pending affirmative asylum caseload, USCIS is prepared to pause (c)(8) initial EADs when the rule becomes effective. As discussed earlier in the preamble, the reduction in (c)(8) initial EAD filings could be a factor in reducing process times for asylum, which could position USCIS in the future to meet the regulatory criteria of 180-day asylum average process time and lift the pause to begin again issuing (c)(8) initial EADs. While DHS cannot speculate on when this would occur, based on estimates discussed previously, DHS assumes it would likely be outside the five-year span under which the impacts applicable to the pause are estimated. Therefore, for purposes of explaining a regulatory baseline, DHS could assume that once Module 2 commences, in the absence of the proposed changes to the clock and the eligibility bars, asylum and (c)(8) EAD volumes would revert back to levels before the rule (and pause) took place.

What the above discussion suggests is that if DHS is meeting the 180-day asylum processing time, (c)(8) initial EAD volumes applicable to affirmative asylum could converge to zero. The impact to affirmative asylum is twofold; first, individuals with approved affirmative claims could benefit because they could become work authorized earlier—their asylum claim would be approved before their ''past'' claim or EAD, whichever of the latter two was approved first. Second, individuals would realize a cost-savings from not filing for an EAD. While DHS expects these impacts to occur, the Department does not make estimates of the impacts to the affirmative population for two reasons; first, as was stated above, for a baseline we could assume asylum filings and concomitant (c)(8) EADs would revert to pre-rule levels, but this is not realistic. Due to lingering effects of the (initial) pause the initial (c)(8) volumes relevant to Module 2 would likely be quite different than recent historical volumes. Second, DHS cannot predict when an asylum claim could be approved (within the 180-day window). In summary, DHS acknowledges that this proposed rule will have a significant impact on both the asylum and associated EAD populations but, for the reasons described above, DHS is unable to quantify the indirect impacts of potential earlier earnings and filing cost-savings.

In Module 2, DHS operates under the assumption that USCIS affirmative asylum applicants would generally not file for an EAD, as their asylum case would potentially be decided in advance of their application for an EAD. This is even more likely given the EAD

[303] These burdens were updated for this rulemaking action and were provided by the USCIS Paperwork Reduction Act (PRA) Branch (Apr. 16, 2025).

[304] As was noted in the above summary section above, DHS recognizes that the current maximum EAD validity period for aliens with pending asylum applications is 18 months, effective December 5, 2025, differs from the 5-year benchmark utilized herein, and that the resulting quantified impacts applicable to this change would also be impacted. DHS caveats that the quantified estimates are currently overstated due to the change in the maximum EAD validity period for aliens with pending asylum applications to 18 months. USCIS will consider the recent change and incorporate updates where appropriate in the final rule to reflect this change.

[305] Data were provided by OPQ on Feb. 18, 2025, with additional supplements on Feb. 25, 2025, and Mar. 12, 2025 (data were obtained from and processed via USCIS Global, ELIS, SAS, Databricks, and Tableau).

filing clock change from 150 to 360 days. Therefore, DHS assumes the affirmative population would not be affected by the Module 2 provision. For Module 2, DHS estimates impacts to the defensive population, also described as the EOIR population. Defensive cases would not be subject to the proposed 180-day asylum process time requirement. Hence the eligibility bars and clock changes would potentially be impactful to defensive cases. The reason is that the data analysis reports the median time for a USCIS referral to EOIR (date of receipt of the asylum application to the referral decision date) is 231 days. Adding the referral time frame to the lengthy current process time for asylum cases at EOIR, DHS expects that most would benefit from filing for an EAD as it would be approved before the asylum decision date, even with the EAD clock changes.

To conduct the analysis, DHS drew a random sample of 5,000 records from initial EAD applications, including affirmative and defensive asylum cases. This size is much larger than is required to generate 95 percent confidence in the results, but DHS oversampled considerably because there are multiple sub-populations impacted, and DHS sought assurance of adequate inter-group representation. The population breakout is reported in Table 8 and is based on the projected annualized average filing volumes or the analysis period of FY 2025 to FY 2029. It is noted that the encompassing population comprises receipt volumes (Section VI.A.3) multiplied by an approval rate of 83.5 percent (applicable to both affirmative and defensive filings), which is the weighted average (c)(8) EAD approval rate for the period FY 2019 through FY 2024 (in estimating specific impacts DHS utilizes a range, derived from historical data for the approval rate, APV).

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Table 8. Populations Potentially Impacted by the Rule (initial (c)(8) EAD approvals).

Provision	Percentage of Total Filing Initial EAD Population	Number (population) impacted (5-year annual average)		
		low	mid	high
Module 1: Issuance pause				
Filing Population	100.0	266,386	602,105	937,824
Filing population x approval rate=initial EAD population **(baseline)**	**83.5**	**222,432**	**502,758**	**783,083**
Module 2: Issuing (c)(8) EADs under asylum completion compliance				
A. Population of EOIR initial EADs[306]	100.0	141,689	320,257	498,824
1. EOIR sub-population subject to the one-year filing (OYB) deadline bar	15.9	22,529	50,921	79,313
2. EOIR sub-population subject to Entry Without Inspection (EWI) ineligibility	19.5	27,488	62,450	97,271
3. EOIR sub-population subject to discretional and criminal bars	unknown	-----		
4. EOIR eligibility bar subtotal population (after removing overlap from provisions)	30.0	42,507	96,077	149,647
5. EOIR remaining population (Row A minus Row A4): that would file for an EAD and be subject the filing time and process time changes	70.0	99,182	224,180	349,177
B. End EADs early for denied asylum (figure applies to USCIS affirmative cases)	0.02	159		

Source: USCIS analysis (Apr. 2, 2025).

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The reported shares derived from the sample are extrapolated to the population to obtain estimates of the number of aliens potentially impacted. For Module 2, the basis for Row A is the total EOIR population, which, based on our analysis, is 63.7 percent of the estimated approved (c)(8) EAD population.[307] DHS examined the three proposed bars to eligibility: one-year filing deadline, entry without inspection, and criminal bars. For the one-year filing deadline, DHS calculated the day-duration between the entry date and the receipt of the Form I–589 to obtain an estimate of the population potentially subject to the 1-year filing deadline bar (OYB). DHS also filtered cases recording entry without inspection (EWI) to estimate the potential population that could be subject to the EWI bar. As can be derived from Table 8, 35.4 percent could be subject to either bar, but we removed the overlap correction factor (OCF) of 5.4 percent, the latter of which is the percentage to which both bars could apply, to arrive at the total share shown (A4). The total number of future EAD filers reported in Row A5, is the EOIR cases population (Row A) minus the OYB and EWI bar population excluding overlap (Row A4). For the other bars, DHS cannot make an estimate of the number or share of cases. Information on criminal activity can be recorded in adjudicative records and officer notes and, while DHS does have some data and information asylum cases that were denied on such grounds, DHS does not have data linking those cases to EAD data in a manner suitable for analysis. The percentages in A1, A2, and A4 thus apply to the EOIR population. For reference, the shares applicable to the total (c)(8) EAD population for the eligibility bars (A4) and those that would file in the future (A5) are 19.1 and 44.6 percent, in order.[308]

DHS also examined the impacts of the proposed changes to termination of employment authorization. The figure of 159 (Row B, Table 8) is the estimated number of annual USCIS asylum denials (DEN) in which the individual received an EAD. This proposed rule would end the EAD (before its expiration date) when USCIS denied the affirmative asylum claim. DHS cannot determine how many would be valid when the rule becomes effective and hence this small volume will be a proxy for the number impacted at effective date.[309]

Because there are multiple metrics involved in the two modules, and because some incur ranges, DHS will utilize a modelling and simulation approach based on a large number of randomized seed trials. This approach provides a robust and efficient estimation mechanism; even though the impacts across module and type are reported separately per regulatory guidance, their setup can be nested into a single-dimension simulation that ensures the impact estimates are based on the same randomized trial values for common variables (for example, population and (c)(8) approval rate). When a data range is involved, a triangle data structure is utilized when a minimum, average, and maximum value is applicable. If there is not an average or ''likeliest'' value, a uniform range is bounded with a maximum and minimum value, which essentially means that the probability of any value chosen in a trial run is the same for all values within the range.

DHS believes it is appropriate to incorporate realistic aspects of the labor market into the DHS estimates. For example, we can assume that all individuals with EADs would be in the labor force but cannot reasonably assume that all are employed at the effective date of the rule, and thus it would be appropriate to take the unemployment rate into account. To integrate labor market effects, DHS calculates an intensity scalar (SCL), a measure of the hours of wages earned per day, per member of the workforce, using the following equation:

$$(1)\ SCL = BEN * (1 - u) * \frac{wh_w}{d_w}$$

Where BEN is the benefits burden, u is the unemployment rate, and

$$\frac{wh_w}{d_w}$$

is the work hours per week divided by the days per week (7). The BEN is defined by BLS and is equal to 1.45,[310] and eighteen specific benefits, as costs to employers. These categories and additional details are found in the ''Technical Note'' at BLS, Economic News Release, ''Employer Costs for Employee Compensation—September 2024'' (Dec. 17, 2024), Table 2. Employer Costs for Employee Compensation for civilian workers by occupation and industry group, *https://www.bls.gov/news.release/archives/ecec_12172024.pdf.* the unemployment rate u, is 0.041, and wh_w is 34.2.[311] This yields a value of 6.79 hours of wages earned per day per member of the workforce.[312]

Working with a single value to incorporate realistic labor factors is beneficial because it is not necessary to adjust the variables—such as the benefits burden to wages and the approval rate to the population—sequentially or even directly; all the inputs interact multiplicatively and can therefore be nested as a single dimensional system. Having described the data and the population, we proceed to the Module 1 estimation.

b. Module 1: EAD Application Acceptance Pause

If there is a pause in the acceptance of applications for (c)(8) EADs, the primary impact to aliens would be forgone labor earnings,[313] with the change to earnings denoted ENG throughout this analysis. We attribute the earnings change to a 5-year horizon, to capture the EAD validity period at the time the analysis was conducted. It includes an adjustment that accounts for possible substitution into another EAD category (SUB). DHS analysis reveals that for the data coverage period, 16.3 percent of (c)(8) EAD holders also received an EAD in another category of eligibility. There could be variance to this share in the future, however. On one hand, a pause in (c)(8) EAD applications would likely drive some aliens to seek EADs in other classes of eligibility, thus raising the share (and thereby reducing the share that would experience earnings change). However, a countervailing motion could occur if actions are undertaken that reduce eligibility in other classes that incurred dual EADs, in which the share could drop. Therefore, we will bound the SUB share at the current share (as the maximum, 16.3 percent) but allow as few as 5 percent to substitute, under the assumption that aliens who received an

[306] DHS emphasizes that the percentage applicable to EOIR is obtained from the sample utilized for the analysis, and applies to EADs; therefore, it may be different than the percentage of asylum cases referred to EOIR by DHS in a particular time frame.

[307] For example, the mid column, 0.637 = 320,257/502,758.

[308] These percentages are the respective shares of the entire approved EAD population. Calculation for the bars: 42,507/222,432 = .191 (rounded). Calculation for future filers: 99,182/222,432 = .446 (rounded).

[309] DHS is aware that some aliens obtain an EAD as a valued identification document. Hence, some individuals may continue to file for a (c)(8) under affirmative asylum even though it would not generate a specific pecuniary benefit. Additionally, the population subject to the bars could decrease if the bars provide an incentive for compliance.

[310] The benefits burden, introduced in Section 4 of this analysis, is broken into five major categories

[311] BLS, ''Current Employment Statistics (National), Establishment Data, Table B–2a. Average weekly hours and overtime of all employees on private nonfarm payrolls by industry sector, seasonally adjusted,'' *https://www.bls.gov/ces/data/employment-and-earnings/2025/table2a_202502.htm* (last visited May 26, 2025).

[312] $6.79 = 1.45 \times (1 - 0.041) \times (34.2/7)$.

[313] By ''forgone,'' DHS implies that aliens would not be able to earn any labor compensation as it relates to a USCIS approved EAD.

EAD in another eligibility category would not sustain an earnings impact.

The earnings metric is based on the hourly wage (HWG, which ranges from $13.97 to $31.48, unburdened) and the time is based on a year (YER = 365 days). Denoting the daily worktime intensity scalar, developed above, as ''SCL'' the estimating equation for the total impact is the sum of three terms. The first, is the earnings change, followed by changes in taxes (TAX),

(2) ENG = {POP × APV × HWG × (1 − SUB) × SCL × YER};

$$(3)\ TAX = \{ENG\left(\frac{TXR}{BEN}\right)\}.$$

As is shown, TAX is calculated as earnings multiplied by the tax rate (TXR=15.3 percent, which is the sum of the Medicare and Social Security tax, developed in Section 4) and divided by the benefits burden (''BEN'') as DHS quantifies tax impacts on unloaded wages. The third term is the form burden cost-savings (CSV), and is expressed as,

(4) CSV = {POP × APV × HWG × (1 − SUB) × FMB × BEN},

which includes the form time-burden (''FMB''=4.72 hours) and BEN. Cost-savings accrue from avoided opportunity costs of time for filing the I–765.

DHS abridged the estimating setup into a truncated equation and nested in the simulation program.[314]

Table 9. Module 1 Impact Estimation.

Annual Results ($millions)	Earnings (ENG) $11,535.2- $42,210.6	Taxes (TAX) $1,217.2- $4,453.9	Cost Savings (CSV) $31.9
Simulation	Trial method: Monte Carlo[315]; Runs=100,000; Confidence +95%		
Variance contribution[316]	Hourly wage: 49.2%, Population: 49.1%, Approval rate: 0.6%.		
USCIS Analysis: SAS JMP 14, Excel, Oracle Crystal Ball (May 23, 2025) The results provide the annual figures, in millions, for a 95% certainty range, thus capturing a high and low bound.			

Table 10 reports the values for the 5-year period FY 2025 through FY 2029. Because the simulation output provides the impact for the average annual EAD population, DHS calculated a five-year total impact from this output. Since the EAD length is currently 5 years, the earnings and taxes impacts grow consecutively each year as there are overlapping populations starting in the second year.[317] However, for costs savings that would result from one-time form submission per initial EAD applicant who can no longer file, DHS used the average annual EAD population (Table 8) for each analysis year.

The net impact is earnings minus cost-savings. The results are presented first in undiscounted terms and then at discount rates of 3 and 7 percent, in order.

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[314] DHS utilizes the Oracle Crystal Ball © modelling and simulation system (OCB). DHS provided the complete estimation system, covering assumptions, inputs, settings, and results unedited in a Crystal Ball Report in the Technical Appendix in the rulemaking docket. The hourly wage is a uniform distribution bounded by the wage levels developed in Section IV.A.4. The approval rate is a triangle distribution set at 0.748, 0.835, and 0.855, as warranted by the analysis. The estimating setup can be abridged into a truncated equation and nested in the simulation program.

[315] In the Monte Carlo simulations, DHS nests a common term applicable to earnings, taxes, and savings, which is the product of the population, approval rate, hourly wage, and unity minus the substitution factor.

[316] The variance contribution captures the contribution of variance for each input to the range of forecasted values. The high and low figure represents the certainty level, which is the range of values between the data-structure-specific 2.5th and 97.5th percentiles.

[317] To determine the earnings and taxes impacts allocated to the FYs 2025, 2026, 2027, 2028, and 2029, DHS uses the average annual filing volume from Table 8 and annual impacts from Table 10. The impacts from not receiving the EAD accrue to each of the 5 years for which the EAD would have resulted in earnings. Accordingly, in 2025 DHS estimates 602,105 EAD filers, with mean estimated earnings of $24,585 million. In 2026 that doubles to 1,204,210 EAD filers with $49,170 million in affected earnings. Continuing that pattern, in 2029 DHS estimates an average of 3,010,525 EAD filers would be affected and a corresponding $122,926 million in earnings. DHS selected the allocation horizon given the 5-year EAD validity in effect at the time of this analysis.

Table 10. Module 1 Monetized Impacts ((c)(8) EAD Issuance Pause) ($ millions).				
FY	**Earnings**	**Taxes**	**Cost savings**	**Net impact = (Earnings - Cost Savings)**
i. Undiscounted; low-end.				
2025	$11,535.2	$1,217.2	$31.9	$11,503.3
2026	$23,070.3	$2,434.3	$31.9	$23,038.4
2027	$34,605.5	$3,651.5	$31.9	$34,573.6
2028	$46,140.6	$4,868.6	$31.9	$46,108.7
2029	$57,675.8	$6,085.8	$31.9	$57,643.9
5-yr. total	**$173,027.3**	**$18,257.4**	**$159.5**	**$172,867.8**
5-yr. average	**$34,605.5**	**$3,651.5**	**$31.9**	**$34,573.6**
I. Undiscounted; mean.				
2025	$24,585.2	$2,594.2	$67.9	$24,517.3
2026	$49,170.3	$5,188.3	$67.9	$49,102.4
2027	$73,755.5	$7,782.5	$67.9	$73,687.6
2028	$98,340.6	$10,376.6	$67.9	$98,272.7
2029	$122,925.8	$12,970.8	$67.9	$122,857.9
5-yr. total	**$368,777.4**	**$38,912.4**	**$339.5**	**$368,437.9**
5-yr. average	**$73,755.5**	**$7,782.5**	**$67.9**	**$73,687.6**
II. Undiscounted; high-end.				
2025	$42,210.6	$4,453.9	$116.6	$42,094.0
2026	$84,421.2	$8,907.9	$116.6	$84,304.6
2027	$126,631.9	$13,361.8	$116.6	$126,515.3
2028	$168,842.5	$17,815.8	$116.6	$168,725.9
2029	$211,053.1	$22,269.7	$116.6	$210,936.5
5-yr. total	**$633,159.3**	**$66,809.2**	**$583.0**	**$632,576.3**
5-yr. average	**$126,631.9**	**$13,361.8**	**$116.6**	**$126,515.3**
III. 3% discount rate; low-end.				
2025	$11,199.2	$1,181.7	$31.0	$11,168.2
2026	$21,746.0	$2,294.6	$30.1	$21,715.9
2027	$31,668.9	$3,341.6	$29.2	$31,639.7

2028	$40,995.3	$4,325.7	$28.3	$40,967.0
2029	$49,751.6	$5,249.7	$27.5	$49,724.1
5-yr. total	**$155,361.0**	**$16,393.3**	**$146.1**	**$155,215.0**
5-yr. annualized	**$33,923.8**	**$3,579.5**	**$31.9**	**$33,891.9**
IV. 3% discount rate; mean				
2025	$23,869.1	$2,518.6	$65.9	$23,803.2
2026	$46,347.7	$4,890.5	$64.0	$46,283.7
2027	$67,496.7	$7,122.1	$62.1	$67,434.6
2028	$87,374.4	$9,219.5	$60.3	$87,314.1
2029	$106,036.9	$11,188.7	$58.6	$105,978.3
5-yr. total	**$331,124.8**	**$34,939.4**	**$311.0**	**$330,813.9**
5-yr. annualized	**$72,302.6**	**$7,629.2**	**$67.9**	**$72,234.7**
V. 3% discount rate; high-end.				
2025	$40,981.2	$4,324.2	$113.2	$40,868.0
2026	$79,575.1	$8,396.5	$109.9	$79,465.2
2027	$115,886.1	$12,228.0	$106.7	$115,779.4
2028	$150,014.3	$15,829.1	$103.6	$149,910.7
2029	$182,056.2	$19,210.1	$100.6	$181,955.7
5-yr. total	**$568,513.0**	**$59,987.9**	**$534.0**	**$567,979.0**
5-yr. annualized	**$124,137.4**	**$13,098.6**	**$116.6**	**$124,020.8**
VI. 7% discount rate, low-end.				
2025	$10,780.5	$1,137.5	$29.8	$10,750.7
2026	$20,150.5	$2,126.2	$27.9	$20,122.6
2027	$28,248.4	$2,980.7	$26.0	$28,222.3
2028	$35,200.5	$3,714.3	$24.3	$35,176.1
2029	$41,122.0	$4,339.1	$22.7	$41,099.3
5-yr. total	**$135,501.9**	**$14,297.8**	**$130.8**	**$135,371.1**
5-yr. annualized	**$33,047.6**	**$3,487.1**	**$31.9**	**$33,015.7**
VII. 7% discount rate; mean.				
2025	$22,976.8	$2,424.4	$63.5	$22,913.3
2026	$42,947.3	$4,531.7	$59.3	$42,888.0
2027	$60,206.4	$6,352.8	$55.4	$60,151.0

2028	$75,023.6	$7,916.3	$51.8	$74,971.8
2029	$87,644.4	$9,248.0	$48.4	$87,596.0
5-yr. total	**$288,798.5**	**$30,473.2**	**$278.4**	**$288,520.1**
5-yr. annualized	**$70,435.3**	**$7,432.1**	**$67.9**	**$70,367.4**
VIII. 7% discount rate, high-end.				
2025	$39,449.2	$4,162.6	$109.0	$39,340.2
2026	$73,736.8	$7,780.5	$101.8	$73,634.9
2027	$103,369.3	$10,907.2	$95.2	$103,274.1
2028	$128,809.1	$13,591.6	$89.0	$128,720.2
2029	$150,477.9	$15,878.0	$83.1	$150,394.8
5-yr. total	**$495,842.3**	**$52,319.9**	**$478.1**	**$495,364.2**
5-yr. annualized	**$120,931.3**	**$12,760.3**	**$116.6**	**$120,814.7**
USCIS Analysis (May 23, 2025).				

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As is reported in Table 10, net impacts from Module 1 could range from $172,867.8 million to $632,576.3.6 million (undiscounted), with a mean estimate of $368,437.9 million over 5 years, with annualized averages that could range from $34,573.6 million to $126,515.3 million, with a mean of $73,687.6 million. At a 3 percent discount rate, net impacts could range from $155,215.0 million to $567,979.0 million, with a mean estimate of $330,813.9 million over 5 years, with annualized figures es that could range from $33,891.9 million to $124,020.8 million, with a mean of $72,234.7 million. At a 7 percent discount rate, net impacts could range from $135,371.1 million to $495,364.2 million, with a mean estimate of $288,520.1 million, with annualized figures that could range from $33,015.7 million to $120,814.7 million, with a mean of $70,367.4 million.

Having developed and reported the quantified and monetized potential impacts of a (c)(8) EAD issuance pause, we turn to Module 2 impacts.

c. Module 2: EAD Issuance Provisions

Under a scenario in which USCIS is processing affirmative asylum applications within 180 days, and therefore USCIS could issue (c)(8) EADs under the provisions of this rule, there could be impacts from other provisions of the proposed rule to both affirmative asylum aliens and also EOIR defensive aliens. Modules 1 and 2 are parsed separately to avoid double counting, as Module 1 quantified impacts comprise the largest (total) impacts of the rule. As was discussed above in reference to the population, all initial approved (c)(8) EADs would be subject to the bars and filing clock changes but in practice, such bars will generally apply only to defensive asylum applicants. This is because when there is not a pause in the issuance of initial (c)(8) EADs, USCIS would generally be adjudicating affirmative applications for asylum before such applicants are eligible to receive employment authorization on the basis of a pending asylum application. The quantified estimates in this section are not in addition to those under a full pause; they should be considered as separate to not overcount.

EAD Denials

The proposed rule would result in some EADs ending early due to new requirements, which would result in earlier denial of work authorization. For the ending of EADs earlier than that stipulated in their validity date, as was explained in the discussion applicable to the population, DHS does not know how many cases will apply at a specific point in time but will utilize the annual number (DEN=159) as a proxy (which can be considered the number, based on the data available, that would be valid at any time within a year).[318] This figure only applies to concomitant affirmative asylum denials, and the true figure, inclusive if defensive cases, would be larger. To obtain the pertinent earnings metric, DHS calculated the amount of time remaining (TMR) left in validity at the date of the asylum claim denial, which is a median 434 days. As was noted in the above section applicable to Module 1, the recent USCIS policy change limiting maximum validity for (c)(8) EADs to 18 months will likely have an impact here as well. Specifically, the median remaining time left would potentially be much lower than 434 days, meaning that the quantified estimates reported below for this impact (earnings and taxes) are overstated currently. The following summary equations represent the Annual Results as shown in Table 11 for earnings and taxes based on ending EADs early due to new requirements,

(5) ENG2 = {DEN × TMR × HWG × SCL};

$$(6)\ \mathrm{TAX2} = \{\mathrm{ENG2}\left(\frac{TXR}{BEN}\right)\}.$$

Eligibility Bars and EAD Clock

For the EOIR defensive asylum cases, there will be two population groups impacted. First, the filing bars will apply, and the changes to the EAD clock

[318] DHS notes that the number of cases (159) does not reflect the entire population and only USCIS affirmative cases.

will be binding. As was introduced in the presentation of the population, DHS expects EAD filings to continue, as the EAD would generally be approved prior to the adjudication of the asylum claim, at least under the current conditions of large backlogs. First, we present the estimation structure for the impacts that would accrue to the ending of some EADs early and the filing bars. As is applicable to the latter, earnings impacts are estimated as,

(7) ENG3 = POP × APV × (OYB + EWI − OCF) × HWG × SCL × YER.

In this equation, the population is the defensive asylum/EOIR population (see Table 8), the term (OYB + EWI − OCF) is the percentage (share) subject to the bars, and taxes are calculated the same way as in Equation 2. Individuals that could be impacted by the eligibility bars might file for an EAD, but if they do, they will be denied. Some aliens are likely to realize they are ineligible and will therefore not file. USCIS believes it is reasonable to operate under the assumption that potential filers with legal representation would likely be advised not to file. USCIS evaluated the (c)(8) data and determined on average about half of the population uses a representative for their (c)(8) EAD request. Therefore, about half the population could incur filing cost-savings and about half would incur sunk costs associated with filing for an EAD that would be denied. In the net, the impact would be close to zero as costs would offset savings.[319]

Eligibility Bars

DHS assumes that aliens subject to the eligibility bars cannot substitute into another EAD class. To estimate the eligibility bar total impact, we can draw out a common term for Module 2 (CT2),

(8) CT2 = {POP × APV × (OYB + EWI − OCF) × HWG}

The following summary equations represent the Annual Results as shown in Table 11 for earnings and taxes for the eligibility bars applicable to EOIR cases,

(9) ENG3 = {CT2 × SCL × YER}

$$(10)\ TAX3 = \{ENG3\left(\frac{TXR}{BEN}\right)\}.$$

Table 11. Module 2 Impact Estimation.

Ending EADs early for denied asylum (USCIS decisions)			
Annual Results ($millions)	Earnings (ENG2): $6.8-$14.5	Taxes (TAX2): $0.7-$1.5	Filing impacts: none
Eligibility bars applicable to EOIR cases.			
Annual Results ($millions)	Earnings (ENG3): $2,474.2-$8,988.1	Taxes (TAX3): $261.1- $948.4	Filing impacts: Net approx. $0
Simulation	Trial method: Monte Carlo; Runs=100,000; Confidence +95%		
Variance contribution (Bars)	Hourly wage: 50.0%, Baseline population: 49.2%.		
USCIS Analysis: SAS JMP 14, Excel, Oracle Crystal Ball (May 23, 2025). The results provide the annual figures, in millions, for a 95% certainty range, thus capturing a high and low bound.			

EAD Clock: Changes to Filing and Processing Time

The changes applicable to the (c)(8) EAD filing and processing time jointly affect the earnings clock. Under the proposed rule, the EAD filing time would increase from 180 days to 365 days, where an applicant would need to wait longer to file under the proposed rule (''EAD clock''). Further, the proposed rule would provide USCIS additional time to adjudicate and process from the baseline 30 days to 180 days. The metric to affected earnings will be the difference in the EAD ''wait time,'' which constitutes the duration between the asylum receipt claim and the approval of the (c)(8) EAD. The wait time is the sum of two components, the EAD filing time (FTC, FTF) and the process time, in which ''C'' denotes current, or past, and ''F'' is the future, or conditions under the rule. To estimate FTF we employ a simple behavioral approach; FTF will be set at 365 applicable to past values less than this value; if someone filed at 200 days in the past they would file at the new minimum (365). For those who filed past 365 days in the past, they would be assigned their actual past value; if someone waited 400 days to file, they would file at that same time in the future. This behavioral system imparts that those filing under 365 days would file unconditionally at the new minimum, whereas others would not be impacted by the filing clock change.

DHS seeks sufficient time to conduct diligent and thorough review, to include screening and vetting for national security and public safety concerns, of (c)(8) EAD applications. While DHS cannot predict exactly what (c)(8) EAD process times will look like in the future, at the time of this analysis we believe that most EADs can be adjudicated within about 120 days and that 90 days is a reasonable cluster point. However, DHS will allow a window of up to 180 days, though an individual case could take longer for any number of reasons. DHS emphasizes that process times of 90 days that we rely on as a cluster point (and 120 days as an upper end range for most (c)(8) EADs applications) is not a prediction, as the process time could vary for reasons linked to case-by-case analysis of individual cases or changes in

[319] Data sources to USCIS, OPQ, queried Sep. 5, 2025. The 50–50 percent split is an approximation, as the figure varies year to year; additionally, some records contain missing or inconsistent information.

operations, resources, policies, and immigration. Rather these values are inputs required to make our estimation procedures tractable and are based on what DHS thinks is currently reasonable.

As it applies to the future process time it is necessary to employ a data transformation mapping each past value to a future one. In this sense, because the future will be charted from past data, there is a behavioral element to the process time also. But, because a transformation is involved, the setup is quasi-behavioral. The data must be mapped to a new process time structure that satisfies multiple policy and operational goals. First, the minimum process time informed from the data analysis (1 day) is not tenable, and it is requisite that this minimum will rise to allow DHS diligence in the adjudicative process. DHS analysis reveals that the data structure for the (c)(8) EAD current process time is positively skewed, with a mean that is larger than the median. Since the potential cluster will be around 90 days, which is near the upper window of 120 days, the data structure will need to be recentered near the upper segment and negatively skewed and bounded to 120. It is noted that the actual upper bound may be more than 120 days, but it is a necessary feature of the model that we employ, which we will address downstream. Additionally, DHS seeks consistency in adjudications and therefore a lower variance is a goal.

This part of the methodology development is technical in nature, and while some details are provided here, the technical appendix accompanying this rulemaking walks through the steps of the estimation procedures in detail. Specifically, DHS began by attempting to scale the process times to satisfy the upper bound, using simple and common transformation procedures utilized in multidisciplinary work. While these methods are not directly set up to bound data to an upper level, DHS was able to adjust the algorithms to satisfy the upper bound, but the results were not tenable for other reasons. Because of the inadequacies applicable the two common procedures, DHS next employed the *logistic* functional form, which is the benchmark to model growth patterns across a number of natural and medical sciences. It has also been a key development practice in the propagation and training of deep learning networks. As it relates to deep learning networks, the logistic form is utilized as a data transformation tool, and offers a setup that directly bounds an upper limit. However, trial runs based on its general and scalable form did not produce tenable results. In summary, the transformed process times gravitated to a specific value, which is a result of a technically involved issue known as a vanishing gradient.

Because of the untenable results noted above, out of necessity DHS turned to a newer type of function that incorporates a logistic *form* into a more flexible but also complex configuration. This form is a hyperbolastic equation of Type 1, denoted ''H1'' employs three tuning parameters and nests the inverse hyperbolic sine (ASINH) in the exponential term of the logistic equation. The tuners are obtained by trial and error, not by a rule-base method. For the future process times, the calibration of tuner settings employed in H1 has accomplished the stated objectives; the minimum EAD process time increased to 24 days; the data cluster in the upper tail (median=90) which is greater than the mean, indicating the distribution has been recentered and skewed leftward, and the variance (as measured by the standard deviation) has declined from 41.5 to 28.3, which is reduction of almost a third (31.8 percent).

For every case, DHS calculated the past wait time (WTP) for an EAD from the data set and a future wait (WTF) from the model developed above and then calculated the wait time difference (WTD). DHS mapped the current process time for their (c)(8) EAD to a new one. The resultant analysis suggests that almost all (98.1 percent) would experience a longer wait time under the proposed provisions of the rule, with a median of 216 days, and a small share (1.9 percent) could experience shortened wait time and gain earnings time, as *WTP>WTF* (the range for the shorter wait times is 1 day to 98 days, with a median of 34 days). To extend these results to the population, DHS set up the earnings delay as positive figures and the gains as negatives, to express net effects and incorporated the WTD according to its distribution and parameters.

Before turning to the simulation and results, we highlight an additional feature of the utilized data structure. It was necessary to stipulate an upper bound, which is 120 days in the current calibration (*i.e.,* when DHS believes most EADs can be adjudicated). But this window is not absolute, as DHS will allow a process time of up to 180 days with any case taking necessarily longer due to security or vetting concerns. The WTD distribution is not finite in its upper tail as we allow for longer wait times (driven by longer process times)—*i.e.* they are not ruled out in the seed trials. Hence, although DHS did not explicitly input longer process times in the estimation mechanism, we can ensconce this possibility without compromising any functionality of the system. In fact, DHS verifies and reports recursively that this effect has been rendered, as a small number of trials resulted in a WTD that exceeded the actual values in the sample (and 180 days)

For aliens that file for an EAD, which to reiterate, is the defensive population not subject to the proposed bars, the impact pertinent to filing for the EAD is the proposed change in the form burden (ΔFMB), which is 0.34 hours. Hence there will be a relatively small increased filing time burden to each individual that files, which DHS denotes as CST . Drawing on a common term for or the clock changes (''CT3''),

$$(11)\ CT3 = POP \times APV\ (1 - OYB - EWI + OCF) \times HWG).$$

The following summary equations represent the Annual Results as shown in Table 12 for earnings, taxes and filing costs for the EAD clock impacts under Module 2,

$$(12)\ ENG4 = \{CT3 \times SCL \times WTD\};$$

$$(13)\ TAX4 = \left\{ENG4\left(\frac{TXR}{BEN}\right)\right\};$$

$$(14)\ CST = \{CT3 \times \Delta FMB \times BEN\}.$$

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Table 12. Model for Estimation of EAD clock Impacts under Module 2.

Input			Structure	Settings
Filing time			Behavioral	$FTF = \begin{cases} 365, & FTC \leq 365 \\ FTC, & FTP > 365 \end{cases}$
Process time			Hyperbolastic Type 1	*Rho: 6.0* *Delta: 0.04* *Psi: 0.4*
Earnings Metric			$WTD = WTP - WTF$	Min. Extreme Likeliest: 218.8 Scale: 58.6 Min: -100
Annual Results ($millions)	Earnings (ENG4) $359.1-$13,377.7	Taxes (TAX4) $63.7-$1,346.2	Filing Costs (CST) $1.1-$4.2	
Simulation			Trial method: Latin Hypercube; Runs=100,000; Confidence +95%	
Variance contribution			WTD: 56.9%, Population: 21.7%, Hourly wage: 21.2%.	
USCIS Analysis (May 23, 2025). The results provide the annual figures, in millions, for a 95% certainty range, thus capturing a high and low bound.				

The estimated earnings and costs impact estimates pertinent to Module 2 are reported in Table 13, The impacts applicable to the change in the form burden are a small cost associated with those who file that would obtain an EAD (the clock changes). As with Module 1, DHS distributed the average annual population and impacts through each year in the analysis. Similarly, the quantified impacts are overstated currently due to the recent USCIS policy change limiting (c)(8) EAD validity to 18 months.

Table 13. Module 2 Earning and Net Filing Impact Estimates ($ million).					
FY	End EADs early	Eligibility bars (due to OYB & EWI)	EAD clock (filing time increases from 180 to 365 days and process time rises)	Filing cost	Total impact
i. Undiscounted; low-end.					
2025	$6.8	$2,474.2	$359.1	$1.1	$2,841.2
2026	$6.8	$4,948.4	$359.1	$1.1	$5,315.4
2027	$6.8	$7,422.6	$359.1	$1.1	$7,789.6
2028	$6.8	$9,896.9	$359.1	$1.1	$10,263.9
2029	$6.8	$12,371.1	$359.1	$1.1	$12,738.1
5-yr. total	**$34.0**	**$37,113.2**	**$1,795.5**	**$5.5**	**$38,948.2**
5-yr. annualized	**$6.8**	**$7,422.6**	**$359.1**	**$1.1**	**$7,789.6**
ii. Undiscounted; mean.					
2025	$10.7	$5,258.9	$6,269.1	$2.4	$11,541.1
2026	$10.7	$10,517.7	$6,269.1	$2.4	$16,800.0
2027	$10.7	$15,776.6	$6,269.1	$2.4	$22,058.8
2028	$10.7	$21,035.5	$6,269.1	$2.4	$27,317.7
2029	$10.7	$26,294.3	$6,269.1	$2.4	$32,576.6
5-yr. total	**$53.5**	**$78,883.0**	**$31,345.7**	**$12.0**	**$110,294.1**
5-yr. annualized .	**$10.7**	**$15,776.6**	**$6,269.1**	**$2.4**	**$22,058.8**
iii. Undiscounted; high-end.					
2025	$14.5	$8,988.1	$13,377.7	$4.2	$22,384.5
2026	$14.5	$17,976.1	$13,377.7	$4.2	$31,372.6
2027	$14.5	$26,964.2	$13,377.7	$4.2	$40,360.6
2028	$14.5	$35,952.2	$13,377.7	$4.2	$49,348.7
2029	$14.5	$44,940.3	$13,377.7	$4.2	$58,336.7
5-yr. total	**$72.5**	**$134,820.9**	**$66,888.7**	**$21.0**	**$201,803.1**
5-yr. annualized	**$14.5**	**$26,964.2**	**$13,377.7**	**$4.2**	**$40,360.6**
iv. 3% discount rate; low-end.					

2025	$6.6	$2,402.1	$348.6	$1.1	$2,758.5
2026	$6.4	$4,664.4	$338.5	$1.0	$5,010.3
2027	$6.2	$6,792.8	$328.6	$1.0	$7,128.6
2028	$6.0	$8,793.2	$319.1	$1.0	$9,119.3
2029	$5.9	$10,671.4	$309.8	$0.9	$10,988.0
5-yr. total	**$31.1**	**$33,323.9**	**$1,644.6**	**$5.0**	**$35,004.7**
5-yr. annualized	**$6.8**	**$7,276.4**	**$359.1**	**$1.1**	**$7,643.4**
v. 3% discount rate; mean.					
2025	$10.4	$5,105.7	$6,086.5	$2.3	$11,204.9
2026	$10.1	$9,914.0	$5,909.3	$2.3	$15,835.6
2027	$9.8	$14,437.8	$5,737.1	$2.2	$20,186.9
2028	$9.5	$18,689.7	$5,570.0	$2.1	$24,271.4
2029	$9.2	$22,681.7	$5,407.8	$2.1	$28,100.8
5-yr. total	**$49.0**	**$70,828.9**	**$28,710.8**	**$11.0**	**$99,599.7**
5-yr. annualized	**$10.7**	**$15,465.8**	**$6,269.1**	**$2.4**	**$21,748.1**
vi. 3% discount rate; high-end.					
2025	$14.1	$8,726.3	$12,988.1	$4.1	$21,732.5
2026	$13.7	$16,944.2	$12,609.8	$4.0	$29,571.6
2027	$13.3	$24,676.0	$12,242.5	$3.8	$36,935.7
2028	$12.9	$31,943.1	$11,885.9	$3.7	$43,845.7
2029	$12.5	$38,765.9	$11,539.7	$3.6	$50,321.8
5-yr. total	**$66.4**	**$121,055.5**	**$61,266.1**	**$19.2**	**$182,407.3**
5-yr. annualized	**$14.5**	**$26,433.0**	**$13,377.7**	**$4.2**	**$39,829.5**
vii. 7% discount rate; low-end.					
2025	$6.4	$2,312.3	$335.6	$1.0	$2,655.3
2026	$5.9	$4,322.1	$313.7	$1.0	$4,642.7
2027	$5.6	$6,059.1	$293.1	$0.9	$6,358.7
2028	$5.2	$7,550.3	$274.0	$0.8	$7,830.2
2029	$4.8	$8,820.4	$256.0	$0.8	$9,082.1
5-yr. total	**$27.9**	**$29,064.3**	**$1,472.4**	**$4.5**	**$30,569.0**

5-yr. annualized	**$6.8**	**$7,088.5**	**$359.1**	**$1.1**	**$7,455.5**
viii. 7% discount rate; mean.					
2025	$10.0	$4,914.8	$5,859.0	$2.2	$10,786.1
2026	$9.3	$9,186.6	$5,475.7	$2.1	$14,673.7
2027	$8.7	$12,878.4	$5,117.5	$2.0	$18,006.6
2028	$8.2	$16,047.8	$4,782.7	$1.8	$20,840.5
2029	$7.6	$18,747.5	$4,469.8	$1.7	$23,226.6
5-yr. total	**$43.9**	**$61,775.1**	**$25,704.7**	**$9.8**	**$87,533.5**
5-yr. annualized	**$10.7**	**$15,066.4**	**$6,269.1**	**$2.4**	**$21,348.6**
ix. 7% discount rate; high-end.					
2025	$13.6	$8,400.1	$12,502.6	$3.9	$20,920.1
2026	$12.7	$15,701.0	$11,684.6	$3.7	$27,402.0
2027	$11.8	$22,010.8	$10,920.2	$3.4	$32,946.3
2028	$11.1	$27,427.8	$10,205.8	$3.2	$37,647.9
2029	$10.3	$32,041.8	$9,538.1	$3.0	$41,593.3
5-yr. total	**$59.5**	**$105,581.5**	**$54,851.3**	**$17.2**	**$160,509.5**
5-yr. annualized	**$14.5**	**$25,750.3**	**$13,377.7**	**$4.2**	**$39,146.8**
USCIS Analysis (Apr. 21, 2025).					

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As is reported in Table 13, net impacts from Module 2, in undiscounted terms, could range from $38,948.2 million to $201,803.1 million, with a mean estimate of $110,294.1 million over 5 years, with annualized averages that could range from $7,789.6 million to $40,360.6 million, with a mean of $22,058.8 million. At a 3 percent discount rate, net impacts could range from $35,004.7 million to $182,407.3 million, with a mean estimate of $99,599.7 million over 5 years, with annualized averages that could range from $7,643.4 million to $39,829.5 million, with a mean of $21,748.1 million. At a 7 percent discount rate, net impacts could range from $30,569.0 million to $160,509.5 million, with a mean estimate of $87,533.5 with annualized averages that could range from $7,455.5 million to $39,146.8 million, with a mean of $21,348.6 million.

In addition to the earnings and costs presented in Table 13, Table 14 reports the Module 2 tax impacts.

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Table 14. Estimated Module 2 Tax impacts ($ millions).				
FY	**End EADs early**	**Eligibility Bars**	**EAD clock**	**Total**
i. Undiscounted; low-end.				
2025	$0.7	$261.1	$63.7	$325.5
2026	$0.7	$522.1	$63.7	$586.5
2027	$0.7	$783.2	$63.7	$847.6
2028	$0.7	$1,044.3	$63.7	$1,108.7
2029	$0.7	$1,305.4	$63.7	$1,369.8
5-yr. total	**$3.5**	**$3,916.1**	**$318.5**	**$4,238.1**
5-yr. annualized	**$0.7**	**$783.2**	**$63.7**	**$847.6**
ii. Undiscounted; mean.				
2025	$1.1	$554.9	$656.2	$1,212.2
2026	$1.1	$1,109.8	$656.2	$1,767.1
2027	$1.1	$1,664.7	$656.2	$2,322.0
2028	$1.1	$2,219.6	$656.2	$2,876.9
2029	$1.1	$2,774.5	$656.2	$3,431.8
5-yr. total	**$5.5**	**$8,323.5**	**$3,281.2**	**$11,610.2**
5-yr. annualized	**$1.1**	**$1,664.7**	**$656.2**	**$2,322.0**
iii. Undiscounted; high-end.				
2025	$1.5	$948.4	$1,346.2	$2,296.1
2026	$1.5	$1,896.8	$1,346.2	$3,244.5
2027	$1.5	$2,845.2	$1,346.2	$4,192.9
2028	$1.5	$3,793.6	$1,346.2	$5,141.3
2029	$1.5	$4,742.0	$1,346.2	$6,089.7
5-yr. total	**$7.5**	**$14,225.9**	**$6,731.0**	**$20,964.4**
5-yr. annualized	**$1.5**	**$2,845.2**	**$1,346.2**	**$4,192.9**
iv. 3% discount rate; low-end.				
2025	$0.7	$253.5	$61.8	$316.0
2026	$0.7	$492.2	$60.0	$552.9
2027	$0.6	$716.8	$58.3	$775.7
2028	$0.6	$927.8	$56.6	$985.1
2029	$0.6	$1,126.0	$54.9	$1,181.6
5-yr. total	**$3.2**	**$3,516.2**	**$291.7**	**$3,811.2**

5-yr. annualized	**$0.7**	**$767.8**	**$63.7**	**$832.2**
v. 3% discount rate; mean.				
2025	$1.1	$538.7	$637.1	$1,176.9
2026	$1.0	$1,046.1	$618.6	$1,665.7
2027	$1.0	$1,523.4	$600.6	$2,125.0
2028	$1.0	$1,972.1	$583.1	$2,556.1
2029	$0.9	$2,393.3	$566.1	$2,960.3
5-yr. total	**$5.0**	**$7,473.7**	**$3,005.4**	**$10,484.1**
5-yr. annualized	**$1.1**	**$1,631.9**	**$656.2**	**$2,289.3**
vi. 3% discount rate; high-end.				
2025	$1.5	$920.8	$1,307.0	$2,229.2
2026	$1.4	$1,787.9	$1,268.9	$3,058.2
2027	$1.4	$2,603.7	$1,232.0	$3,837.1
2028	$1.3	$3,370.5	$1,196.1	$4,568.0
2029	$1.3	$4,090.5	$1,161.2	$5,253.0
5-yr. total	**$6.9**	**$12,773.4**	**$6,165.2**	**$18,945.5**
5-yr. annualized	**$1.5**	**$2,789.1**	**$1,346.2**	**$4,136.8**
vii. 7% discount rate; low-end.				
2025	$0.7	$244.0	$59.5	$304.2
2026	$0.6	$456.1	$55.6	$512.3
2027	$0.6	$639.3	$52.0	$691.9
2028	$0.5	$796.7	$48.6	$845.8
2029	$0.5	$930.7	$45.4	$976.6
5-yr. total	**$2.9**	**$3,066.8**	**$261.2**	**$3,330.8**
5-yr. annualized	**$0.7**	**$748.0**	**$63.7**	**$812.4**
viii. 7% discount rate; mean.				
2025	$1.0	$518.6	$613.3	$1,132.9
2026	$1.0	$969.3	$573.2	$1,543.5
2027	$0.9	$1,358.9	$535.7	$1,895.5
2028	$0.8	$1,693.3	$500.6	$2,194.8
2029	$0.8	$1,978.2	$467.9	$2,446.9
5-yr. total	**$4.5**	**$6,518.3**	**$2,690.7**	**$9,213.6**
5-yr. annualized	**$1.1**	**$1,589.8**	**$656.2**	**$2,247.1**
ix. 7% discount rate; high-end.				

2025	$1.4	$886.4	$1,258.1	$2,145.9
2026	$1.3	$1,656.7	$1,175.8	$2,833.9
2027	$1.2	$2,322.5	$1,098.9	$3,422.6
2028	$1.1	$2,894.1	$1,027.0	$3,922.3
2029	$1.1	$3,381.0	$959.8	$4,341.8
5-yr. total	**$6.2**	**$11,140.7**	**$5,519.6**	**$16,666.5**
5-yr. annualized	**$1.5**	**$2,717.1**	**$1,346.2**	**$4,064.8**
USCIS Analysis (Apr. 7, 2025).				

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As is reported in Table 14, for Module 2 the average annualized equivalence tax impacts could range from $832.2 million to $4,136.8 million, with a mean estimate of $2,289.3 million at a 3-percent discount rate. At a 7 percent discount rate, tax impacts could range from $812.4 million to $4,064.8 million, with a mean estimate of $2,247.1 million.

7. Distributional Effects of the Monetized Impacts

The impacts of this proposed rule can include both potential distributional effects (which are transfers), costs, and cost savings. The potential distributional impacts fall on the aliens who may be delayed in entering the U.S. labor force or may be prevented from entering altogether. The potential distributional impacts (transfers) would be in the form of forgone opportunity to earn compensation (wages and benefits). A portion of this lost compensation might be transferred from aliens to others that are currently employed in the U.S. labor force, possibly in the form of additional hours worked or overtime pay. A portion of the impacts of this rule may also be borne by companies that would have hired the aliens had they been in the labor market earlier. However, if the employer were unable to find available workers these companies could incur a cost, as they may be losing the productivity and potential profits the alien may have provided had the alien been in the labor force sooner.

Companies may also incur opportunity costs by having to choose the next best alternative to immediately filling the job the alien would have filled. USCIS does not know what this next best alternative may be for those companies. As a result, USCIS does not know the portion of overall impacts of this rule that are transfers or costs, therefore DHS estimates a range of effects of the proposed rule between transfers and costs. DHS describes the two extreme scenarios, which provide the bounds for the range of effects. USCIS uses the changes to earnings to aliens as a measure of the overall impact of the rule—either as distributional impacts (transfers) or as a proxy for businesses' cost, for lost productivity (costs).

In Scenario 1, if all employers can immediately find replacement labor for the position the alien would have filled, this rule would have primarily distributional effects in the form of transfers from aliens to others already in the labor market (or workers induced to return to the labor market). This scenario also requires the further assumption that these native workers would not have been employed in any other job, but for these newly available jobs, and that there are no general equilibrium effects to other jobs from removing a large number of EAD job seekers from the economy. Accordingly, this rule would result in $70.44 billion (primary estimate annualized, 7 percent) being transferred from aliens, who would not have work authorization, to workers currently in the labor force (whom are not presently employed full time) or induced back into the labor force. In Scenario 1, this rule would result in $0 cost to employers for prevented productivity losses. USCIS acknowledges that there may be additional opportunity costs to employers such as additional search costs.

In Scenario 2, if all employers cannot immediately find a reasonable substitute for the labor an alien would have provided, the effect of this rule would primarily be a cost to these employers through lost productivity and profits. Accordingly, $70.44 billion is the estimated monetized costs from this rule for productivity losses in Scenario 2. Because under this scenario businesses would not have been able to find replacement labor, the rule may also result additional business costs in lost profits. Further, the rule may prevent tax transfer payments from businesses and employees to federal and state governments. In instances where a company cannot easily hire replacement labor for the position the alien would have filled, USCIS acknowledges that such delays may result in tax losses to governments. USCIS has not estimated all potential tax effects but notes that lost productivity (wages as a proxy) of $70.44 billion would have resulted in employment tax losses to the Federal Government (*i.e.,* Medicare and Social Security) of $7.43 billion. However, it is important to emphasize that if there are reduced strains on public resources from reduced immigration, there could be a balancing in the form of fiscal benefits to offset the tax reductions.

These estimates do not include additional costs to businesses for lost profits and opportunity costs or the distributional impacts for those in an alien's support network. In either scenario, DHS assumes employers would not face turnover costs for aliens unable to get an initial EAD.[320] Hiring costs remain unchanged, as employers would incur the same costs for a different worker. However, DHS

[320] Employment separations can generate labor turnover costs to employers. There are direct costs to employers that include exit interviews, severance pay, and costs of temporarily covering duties and functions with other employees, which may require overtime or temporary staffing. There can also be costs involving loss of productivity and possibly profitability due to operational and production disruptions, which can include errors from other employees that may temporally fill the position. There can also be indirect costs, which encompass loss of institutional knowledge, networking, and impacts to work-culture, morale, and interpersonal relationships.

recognizes that employers could incur additional search time costs due to decrease in available new hires.

In either scenario, aliens would no longer submit applications and would realize associated cost savings from time burdens and not paying filing fees. DHS includes these cost savings of $0.07 billion in both scenarios.

Table 15 below summarizes these two scenarios for the Module 1 primary estimate of this rule at a 7-percent discount rate.[321] Because DHS does not know the overall proportion of businesses that would have been able to easily find replacement labor in the absence of this rule, for the primary estimate, DHS assumes that replacement labor would have been immediately found for half of all affected EAD applicants and not found for the other half (*i.e.,* an average of the two extreme scenarios described above). As of April 2025, unemployment and job openings data indicate there are as many jobs available as people looking for jobs.[322] This statistic supports that there is uncertainty in predicting whether employers will be able to immediately find replacement labor. In addition, effects of this rulemaking would depend in part on the interaction of a number of complex variables that constantly are in flux, including national, state, and local labor market conditions, economic and business factors, the type of occupations and skills involved, and the availability of similarly skilled workers. DHS welcomes public comment on the validity of the assumption that half the affected jobs, that would have gone to workers with initial EADs, immediately are filled by other authorized workers. DHS acknowledges there is extensive literature on the impacts of immigration on labor markets.[323] DHS welcomes public comment, including evidentiary findings, that would inform the primary estimate regarding the distribution between transfers in Scenario 1 and productivity costs in Scenario 2.

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Table 15. Primary Estimate – Monetized Annualized Impacts Discounted at 7% (billions).

Category	Description	Scenario 1: Immediate replacement of labor found for all affected EADs (A)	Scenario 2: No replacement labor found for affected EADs over the period of analysis (B)	Primary Estimate: Replacement found for half of affected EADs (C = (A + B)/2)
Transfers				
Earnings	Compensation transfers from EAD applicants to other workers	$70.44	$0.00	$35.22
Employment Taxes	Reduction in employment taxes paid to the Federal Government	$0.00	$7.43	$3.72
Costs and Cost Savings				
Cost Savings	EAD application savings	-$0.07	-$0.07	-$0.07
Productivity Cost	Lost productivity to employers (lost compensation used as a proxy)	$0.00	$70.44	$35.22

[321] DHS assessed that the primary impact and most likely circumstance would be a pause of EAD applications, and therefore uses Module 1 as the primary impact of the rule. DHS does not include Module 2 impacts in the primary estimate, as the pause would affect the same populations in both Module 1 and 2, and including both would be double counting impacts on the same population.

[322] Bureau of Labor Statistics data show that, as of April 2025, there were 1.0 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 June 16, 2025).

[323] Edo, Anthony. ''The impact of immigration on the labor market.'' *Journal of Economic Surveys* 33.3 (2019): 922–948.

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Further, 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.[324] 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.[325] The monetized estimates of the lost compensation this rule creates are measured relative to a baseline in which individuals would have had employment authorization and the associated income as a result of the problem this rule seeks to address. The monetary value of the compensation this rule removes are costs to the individual, but DHS has considered whether net societal costs may be lower than the sum of the lost compensation to the individuals and whether a more accurate estimate of the net impact to society from losing employment authorization as a result of this rule might take into account the value of individuals' non-work time, even though this population would lose 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 lost compensation in order to account for the social value of non-work time. Accordingly, DHS recognizes that the net societal costs of this rule 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.

The total quantified impacts of the proposed rule are within the estimates for Module 1. Module 1 captures the effects of the USCIS pause on accepting affirmative and defensive (c)(8) initial EAD applications while affirmative asylum applications process time average over 180 days. In summary, DHS's primary estimate of the total cost of the proposed rule assumes that half of employers are able to easily find replacement labor for the jobs the aliens would have filled. The total annualized cost in lost productivity would be $35.2 billion, and $35.2 billion in transfer impacts from shifting earnings from aliens, who would not get work authorized under the rule, to other workers, both discounted at 7 percent. Under this scenario, the annualized transfer impacts from reductions in tax revenue from aliens and employers to the government would total $3.7 billion, discounted at 7 percent. The total cost savings impacts, which would occur whether or not employers are able to find replacement labor would be $0.07 billion annualized, discounted at 7 percent.

8. Impacts on Labor Market

USCIS notes that this rule does not introduce any newly eligible workers into the labor force. This proposed rule temporarily prevents new asylum applicants from applying for an EAD and joining the labor force during the proposed pause, delays some applicants entry into the labor force by amending the processing of employment authorizations timing for pending asylum applicants, and bars other applicants from employment authorization while their EAD is pending by proposing to establish new eligibility criteria. The ability of pending asylum applicants to be eligible for requesting employment authorization in certain circumstances is in existing regulations.

USCIS projects an average (c)(8) initial filing EAD population ranging between a low of 266,386 and high of 937,824 people, with the midpoint at 602,105. The U.S. labor force consists of a total of about 170,000,000 as of February 2025.[326] Therefore, the average population (midpoint level) affected by this rule represents about 0.35 percent of the U.S. labor force.

9. Other Impacts Not Estimated

DHS notes that for the small population of 159 annual USCIS affirmative cases in which an alien who was denied asylum obtained an EAD (and for the population pertinent to defensive asylum, for which DHS cannot currently determine a volume), ending these EADs is not expected to generate labor turnover cost to their current employers. The impacted aliens would lose employment authorization regardless of this DHS action; they would potentially lose authorization earlier under this proposed rule, but employers would incur a turnover cost in either case and it is therefore not an impact applicable to this proposed rule.

DHS has explained that this rule proposes a general biometrics requirement for asylum applicants seeking a (c)(8) EAD. Aliens who fail to appear for a scheduled biometrics appointment would not be eligible for a (c)(8) EAD. Any alien who submits biometrics at an ASC incurs cost of time to travel to an ASC. DHS estimates that it takes 1 hour and 10 minutes to submit fingerprints, be photographed, and provide a signature. Aliens will need to travel to an ASC for their appointment. DHS estimates that the average round-trip distance to an ASC is 50 miles, and that the average travel time for the trip is 2.5 hours.[327] The cost of travel also includes a mileage charge based on the estimated 50-mile round trip at the 2025 General Services Administration rate of $0.70 per mile.[328] DHS is not accounting for the opportunity costs and travel costs associated with submitting biometrics, for aliens in this phase of the rule because USCIS accounts for them in a separate rulemaking which also proposes to require biometrics for all (c)(8) EAD applicants.[329] DHS notes that total biometrics-related costs are not estimated for individual classes of EADs, though they are estimated for asylum filings.

The quantified portion of this impact analysis focused on initial EAD applications, but regulatory provisions will impact (c)(8) renewals. DHS emphasizes that the renewal filing will be adjudicated on its own merit and will not be retrospective to the initial EAD. Specifically, renewal filers will be subject to the proposed biometrics requirement, one-year filing deadline and criminal bar eligibility requirements, and the proposed changes to EAD terminations.

Under the possibility that some renewal filings will not be approved, individuals could lose employment authorization, for which earnings changes could be costs for lost productivity or transfers to other workers, as has been discussed. DHS does not attempt to estimate impacts

[324] Boardman et al., Cost-Benefit Analysis Concepts and Practice (2018), p. 152.

[325] For regulatory analysis purposes, DHS generally assumes the value of time for unemployed individuals is at least the value of the Federal minimum wage.

[326] BLS, ''Economic News Release, Table A–1. Employment status of the civilian population by sex and age,'' *https://www.bls.gov/news.release/empsit.t01.htm* (last updated Apr. 4, 2025).

[327] In past rulemakings, DHS estimated that the average round-trip distance to an ASC is 50 miles and that the average time for that trip will be 2.5 hours. *See,* for example, DHS Final Rule, Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives, 78 FR 572 (Jan. 3, 2013).

[328] GSA, ''Privately owned vehicle (POV) mileage reimbursement rates,'' *https://www.gsa.gov/travel/plan-book/transportation-airfare-rates-pov-rates/privately-owned-vehicle-pov-mileage-reimbursement-rates* (last updated Dec. 30, 2024).

[329] See section V.A. Collection and Use of Biometrics by U.S. Citizenship and Immigrations Services NPRM, FR 49062 (Nov. 3, 2025) for more information about the separate rulemaking and USCIS' consideration of the rules' combined effects there.

pertinent to renewals because DHS has no way of determining how many renewal filings could be impacted. Over the period FY 2020 through FY 2024 there were about 2.24 million approved initial (c)(8) EADs. In the same timeframe there were about 1.45 million approved renewals, suggesting a renewal rate of about 65 percent.[330]

If a renewal filing is denied and aliens lose work authorization due to the proposed changes, employers could face an involuntary separation. Employment separations can generate labor turnover costs to employers. There are direct costs to employers that include exit interviews, severance pay, and costs of temporarily covering duties and functions with other employees, which may require overtime or temporary staffing. There can also be costs involving loss of productivity and possibly profitability due to operational and production disruptions, which can include errors from other employees that may temporally fill the position. There can also be indirect costs, which encompass loss of institutional knowledge, networking, and impacts to work-culture, morale, and interpersonal relationships.[331]

In addition to possible labor turnover costs to employers, aliens who face denied renewals would likely incur costs related to job search. DHS cannot quantify these possible effects.

Finally, as is described more fully in the preamble, USCIS currently faces a situation with some similarity to that requiring the 1994 actions. That action resulted in a substantial drop in asylum claims without a concomitant decline in approvals. These actions had an unmistakable impact on asylum program integrity. With overall asylum filings decreasing and the approval rate increasing, the clear implication was that ineligible aliens (regardless of the basis for ineligibility or whether the filing was frivolous, fraudulent, or otherwise meritless) stopped filing and the result de-clogged the asylum system. DHS is seeking a similar result with this proposed regulatory action.

A decrease in asylum filings and (c)(8) EAD filings could potentially generate operational efficiencies and improvements that stand to benefit DHS and the public. DHS does not, in proposed rulemakings, make predictions or specific possible actions applicable to resource allocation, but it is possible that a decline in filings noted above could lead USCIS to devote resources to other areas adjudication and service that might require resources. For example, most USCIS Asylum Officers occupy the GS–13 paygrade. The CY 2025 hourly wage for a mid-level (GS–13 step 5) federal worker is $48.9. Loaded for benefits, but not including a locality adjustment, this rate is $70.9. Currently, the average review time for a Form I–589 is about 7.5 hours, at which the USCIS ''direct'' cost is $531.8 per case.[332] This cost does not include indirect resourcing, such as preparing for interviews, and does not capture costs to EOIR for referred cases. Therefore, this basic cost, which is probably a very small fraction of the true total costs, could be saved per case, or transferred to another area of service, generating a potential benefit to the public.

As is explained in the preamble, DHS believes this proposed rule will disincentivize aliens from filing for asylum solely to obtain an EAD, and therefore, asylum filings could decline, even though the proposed rule does not directly regulate the Form I–589. DHS has no way of predicting how Form I–589 volumes could change as a result of the proposed rule.

There could also be benefits in terms of reduced fiscal strains and resource expenses if there is a decline in asylum filings. DHS recognizes that asylum applicants who work are paying taxes, but they are also eligible for some public benefits. DHS notes that some FY 2025 benefits for asylum seekers were removed by legislative action,[333] but some are currently available, notably public K–12 education.[334]

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The proposed rule does not directly regulate small entities and is not expected to have a direct effect on small entities. It does not mandate any actions or requirements for small entities when asylum applicants seek employment authorization from USCIS. Rather, this proposed rule regulates individuals, and individuals are not defined as ''small entities'' by the Regulatory Flexibility Act. While some employers could experience costs or transfer effects, these impacts are not a result of compliance with the requirements of this rule and thus would be indirect. Based on the evidence presented in this analysis and throughout this preamble, DHS certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. DHS nonetheless welcomes comments regarding potential impacts on small entities, which DHS may consider as appropriate in a final rule.

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.[335] 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 USCIS 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. *See* 2 U.S.C. 1532(a). The inflation adjusted value of $100 million in 1995 is approximately $206 million in 2024 based on the Consumer Price Index for All Urban Consumer (CPI–U).[336]

[330] Source: ''Form I–765, Application for Employment Authorization, Eligibility Category and Filing Type,'' accessed at the USCIS public facing data portal, at: *https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data* (July 2, 2025).

[331] See ''Estimating the Costs of Employee Turnover,'' Indeed, Last updated December 5, 2024, at: *https://www.indeed.com/hire/c/info/estimating-cost-of-higher-turnover.*

[332] 332 USCIS analysis, May 27, 2025.

[333] *See* H.R.1—One Big Beautiful Bill Act (OBBBA), Public Law 119–21, Title VII, Subchapter B, Sec. 71201, 138 Stat. 78 (limiting Medicare coverage to U.S. citizens and nationals, lawful permanent residents, Cuban and Haitian entrants, and individuals lawfully residing in the United States in accordance with a Compact of Free Association referred to in 8 U.S.C. 1612(b)(2)(G)).

[334] Some of these benefits and changes made by recent legislation are found in: ''Are Immigrants Eligible for Government Assistance?, by USAFacts, at: *https://usafacts.org/articles/immigrant-program-eligibility/* (Aug. 15, 2025).

[335] The term ''Federal mandate'' means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 1502(1) and 658(5) and (6).

[336] *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-202412.pdf* (last visited May 26, 2025). Calculation of inflation: (1) Calculate the average monthly CPI–U for the reference year (1995) and the current year (2024);

Continued

Although this proposed rule does exceed the $100 million expenditure threshold in an annual year when adjusted for inflation ($206 million in 2024 dollars), this rulemaking does not contain such a mandate. Some private sector entities may incur a cost, as they could incur changes to productivity and potential profits that the alien could have provided. Additionally, some renewal filings that are denied could cause involuntary separations in which employers could face a labor turnover cost. Entities may also incur opportunity costs by having to choose the next best alternative to immediately filling the job the alien would have filled. In such instances, DHS does not know if or to what extent this would impact the private sector but assesses that such impacts would result indirectly from delays in or loss of employment authorization and would not be a consequence of an enforceable duty. As a result, such costs would not be attributable to a mandate under UMRA.[337] Similarly, any costs or transfer effects on state and local governments would not result from a mandate under UMRA.[338] Therefore, the requirements of title II of UMRA do not apply, thus DHS has not prepared a statement under UMRA.

D. Executive Order 13132 (Federalism)

This proposed rule would 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, it is determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

E. Executive Order 12988 (Civil Justice Reform)

This proposed rule was drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform. This proposed 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 proposed rule meets the applicable standards provided in section 3 of E.O. 12988.

F. Family Assessment

DHS has reviewed this proposed rule in line with the requirements of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681, 2681–528 (1998). 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 USCIS determines a regulation may negatively affect family well-being, then USCIS must provide an adequate rationale for its implementation.

With respect to the criteria specified in section 654(c)(1), DHS has determined that the rule may delay the ability for certain initial aliens to work and limit or prohibit some from working based on criminal and immigration history, which may decrease disposable income of those aliens with families. A portion of this lost compensation might be transferred from aliens with pending asylum applications to others that are currently in the U.S. labor force, or, eligible to work lawfully, possibly in the form of additional work hours or the direct and indirect added costs associated with overtime pay. DHS does not know how many aliens contribute to family disposable income. The total change to compensation to the pool of potential aliens with pending asylum applications could range from $34.6 billion to $126.6 billion annually (undiscounted), depending on the wages the alien would have earned. For the reasons stated elsewhere in this preamble, however, DHS has determined that the benefits of the action justify the potential financial impact on the family.

G. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This proposed rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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 proposed regulatory actions to determine whether the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* applies and, if so, what degree of analysis is required. DHS Directive 023–01 Rev. 01 ''Implementing the National Environmental Policy Act'' (Dir. 023– 01 Rev. 01) and Instruction Manual 023–01–001–01 Rev. 01 (Instruction Manual) [339] establish the policies and procedures that DHS and its components use to comply with NEPA.

NEPA allows 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 or environmental impact statement.[340] The Instruction Manual, Appendix A lists the DHS categorical exclusions.[341]

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.[342]

(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; and (4) Multiply by 100=[(Average monthly CPI–U for 2024–Average monthly CPI–U for 1995)÷(Average monthly CPI–U for 1995)]×100=[(313.689–152.383)÷152.383] (161.306÷152.383)=1.059×100=105.86 percent=106 percent (rounded). Calculation of inflation-adjusted value: $100 million in 1995 dollars×2.06=$206 million in 2024 dollars.

[337] *See* 2 U.S.C. 658(6) and (7) (defining a federal private sector mandate as, *inter alia,* a regulation that imposes an enforceable duty upon the private sector except for a duty arising from participation in a voluntary Federal program); 2 U.S.C. 1502(1).

[338] *See* 2 U.S.C. 658(5) and (6) (defining a federal intergovernmental mandate as, *inter alia,* a regulation that imposes an enforceable duty upon State, local, or tribal governments, except for a duty arising from participation in a voluntary Federal program); 2 U.S.C. 1502(1).

[339] The Instruction Manual contains DHS's procedures for implementing NEPA and was issued November 6, 2014, *https://www.dhs.gov/ocrso/eed/epb/nepa.*

[340] *See* 42 U.S.C. 4336(a)(2), 4336e(1).

[341] *See* Instruction Manual, Appendix A, Table 1.

[342] Instruction Manual section V.B(2)(a) through (c).

This proposed rule is limited to amending the regulatory criteria for employment authorization for aliens with pending asylum applications. The proposed rule is strictly administrative and procedural and amends regulations governing the eligibility for and the administration of employment authorization for aliens with pending asylum applications. DHS has reviewed this proposed 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 proposed rule.

Accordingly, DHS finds that the promulgation of this proposed rule's amendments to current regulations 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. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 109 Stat. 163, all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a rule. USCIS is revising two information collections in association with this rulemaking action:

Form I–589

USCIS invites the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0067 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and Public Participation sections of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of Information Collection

(1) *Type of information collection:* Revision of a Currently Approved Collection.

(2) *Title of the form/collection:* Application for Asylum and for Withholding of Removal.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* Form I–589; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–589 is necessary to determine whether an alien applying for asylum and/or withholding of removal in the United States is classified as refugee and is eligible to remain in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–589 is approximately 152,542 and the estimated hour burden per response is 12 hours per response; the estimated total number of respondents for the information collection I–589 (online filing) is approximately 50,837 and the estimated hour burden per response is 11 hours per response, and the estimated number of respondents providing biometrics is 192,278 and the estimated hour burden per response is 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 2,620,526 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $83,792,148.

Form I–765

USCIS invites the general public and other Federal agencies to comment on the impact to the proposed collection of information. In accordance with the PRA, the information collection notice is published in the **Federal Register** to obtain comments regarding the proposed edits to the information collection instrument.

Comments are encouraged and will be accepted for 60 days from the publication date of the proposed rule. All submissions received must include the OMB Control Number 1615–0040 in the body of the letter and the agency name. To avoid duplicate submissions, please use only *one* of the methods under the **ADDRESSES** and Public Participation sections of this rule to submit comments. Comments on this information collection should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of Information Collection

(1) *Type of information collection:* Revision of a Currently Approved Collection.

(2) *Title of the form/collection:* Application for Employment Authorization.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–765; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form I–765 collects information needed to determine if an alien is eligible for an initial EAD, a replacement EAD, or a subsequent EAD upon the expiration of a previous EAD under the same eligibility category. Aliens in many immigration statuses are required to possess an EAD as evidence of employment authorization. To be authorized for employment, an alien must be lawfully admitted for permanent residence or authorized to be so employed by the INA or under regulations issued by DHS. Pursuant to statutory or regulatory authorization,

certain classes of aliens are authorized to be employed in the United States without restrictions as to location or type of employment as a condition of their admission or subsequent change to one of the indicated classes. USCIS may determine the validity period assigned to any document issued evidencing an alien's authorization to work in the United States. These classes of aliens authorized to accept employment are listed in 8 CFR 274a.12. USCIS also collects biometric information from certain aliens applying for employment authorization to verify the alien's identity, check or update their background information, and produce the EAD card. An applicant for employment authorization can apply for a Social Security number and Social Security card using Form I–765.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–765 (paper) is 1,682,157 and the estimated hour burden per response is 4.72 hours; the estimated total number of respondents for the information collection I–765 (electronic) is 455,653 and the estimated hour burden per response is 4.35 hours; the estimated total number of respondents for the information collection Form I–765WS is 302,000 and the estimated hour burden per response is 0.50 hours; the estimated total number of respondents for the information collection Biometric Processing is 302,355 and the estimated hour burden per response is 1.17 hours; the estimated total number of respondents for the information collection Passport-Style Photographs is 2,286,000 and the estimated hour burden per response is 0.50 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 12,054,985 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $400,895,820.

J. Executive Order 14192 (Unleashing Prosperity Through Deregulation)

This propose ruled is exempt from E.O. 14192, Unleashing Prosperity Through Deregulation. DHS has determined that this proposed rule is being issued with respect to national security, homeland security, and immigration-related functions of the United States as described in section 5(a) of E.O. 14192.

K. Executive Order 12630 (Governmental Actions and Interference With Constitutionally Protected Property Rights)

This rule would not cause the taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

List of Subjects

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, DHS proposes to codify in regulation amendments to parts 208 and 274a of chapter I of title 8 of the Code of Federal Regulations as follows:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 1. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Public Law 110–229; 8 CFR part 2; Pub. L. 115–218.

■ 2. Amend § 208.3 by revising paragraph (c)(3) to read as follows:

§ 208.3 Form of application.

* * * * *

(c) * * *

(3) An asylum application filed with USCIS must be properly filed in accordance with § 103.2(a) of this chapter and the form instructions. USCIS will record the receipt date of a complete asylum application in accordance with § 103.2(a)(7) of this chapter. The receipt of an asylum application will begin the 365 calendar-day waiting period after which the applicant may file an application for employment authorization in accordance with § 208.7. If an asylum application does not comply with the requirements of § 103.2(a) of this chapter or the form instructions, the asylum application will be deemed incomplete. USCIS will reject and return an application that is incomplete.

* * * * *

§ 208.4 [Amended]

■ 3. Amend § 208.4 by:

■ a. In the introductory text, removing ''paragraph (b) of this section'' and adding in its place ''§ 208.3.''

■ b. In paragraph (b)(1), removing ''Any delay in adjudication or in proceedings caused by a request to amend or supplement the application will be treated as a delay caused by the applicant for purposes of § 208.7 and 8 CFR 274a.12(c)(8).''

■ 4. Revise § 208.7 to read as follows:

§ 208.7 Employment authorization.

(a) *Application and decision.*—(1)(i) *In general.* Subject to restrictions contained in sections 208(d) and 236(a) of the Act, and except as otherwise provided in paragraph (iv) of this section, an applicant for asylum will be eligible pursuant to §§ 274a.12(c)(8) and 274a.13(a) of this chapter to request employment authorization. The applicant must request employment authorization on the form designated by USCIS, with the appropriate fee, and according to the form instructions, and must submit biometrics at a scheduled biometrics services appointment, in accordance with § 103.2(b)(9) of this chapter.

(ii) *Period for filing.*

(A) Initial applications for employment authorization received on or after EFFECTIVE DATE OF THE FINAL RULE under this section, may be submitted no earlier than 365 calendar days after the date on which a complete asylum application submitted in accordance with §§ 208.3 and 208.4 or §§ 1208.3 and 1208.4 has been received. If an application for employment authorization based on a pending asylum application is filed before the expiration of the 365 calendar-day waiting period, the employment authorization application will be denied. If an asylum application has been rejected and returned as incomplete in accordance with § 208.3(c)(3), the 365 calendar-day waiting period will commence upon the date of receipt of the complete asylum application as recorded pursuant to §§ 208.3(c)(3) and 103.2(a)(7) of this chapter.

(B) Initial applications for employment authorization received before EFFECTIVE DATE OF THE FINAL RULE may not be granted prior to the expiration of the 180-day period following the filing of the asylum application filed on or after April 1, 1997. Any delay requested or caused by the applicant shall not be counted as part of these time periods, including delays caused by failure without good cause to follow the requirements for fingerprint processing. Such time periods shall also be extended by the

equivalent of the time between issuance of a request for evidence pursuant to § 103.2(b)(8) of this chapter and the receipt of the applicant's response to such request.

(iii) *Processing timeframe.* For initial applications for employment authorization received on or after EFFECTIVE DATE OF THE FINAL RULE under this section, USCIS will have 180 days to adjudicate an initial application for employment authorization, except for those applications requiring additional review for background checks or vetting. For initial applications for employment authorization received before EFFECTIVE DATE OF THE FINAL RULE, USCIS will have 30 days to adjudicate an initial application for employment authorization, except for those applications requiring additional review for background checks or vetting.

(iv) *Asylum applicants who are ineligible for employment authorization.* An applicant for asylum is not eligible for employment authorization if:

(A) There is reason to believe that the applicant may be barred from a grant of asylum due to the applicability of one of the criminal bars to asylum under sections 208(b)(2)(A)(ii)–(iii).

(B) An asylum officer or an Immigration Judge has denied the applicant's asylum application within the 365 calendar-day waiting period or before the adjudication of the initial request for employment authorization;

(C) The applicant filed his or her asylum application on or after EFFECTIVE DATE OF THE FINAL RULE and filed the application after the 1-year filing deadline as described in § 208.4(a)(2) of this chapter, unless:

(*1*) An asylum officer or Immigration Judge determines that the applicant meets an exception for late filing as provided in section 208(a)(2)(D) of the Act and §§ 208.4 and 1208.4 of this chapter, or

(*2*) The applicant was under USCIS' initial jurisdiction as an unaccompanied alien child as defined in 6 U.S.C. 279(g)(2); or

(D) The applicant is an alien who entered or attempted to enter the United States at a place and time other than lawfully through a U.S. port of entry on or after EFFECTIVE DATE OF THE FINAL RULE unless the alien demonstrates that he or she:

(*1*) without delay, but no later than 48 hours after the entry or attempted entry, indicated to an immigration officer an intention to apply for asylum or expressed to an immigration officer a fear of persecution or torture;

(*2*) Has good cause for the illegal entry or attempted entry, provided such good cause does not include the evasion of U.S. immigration officers, convenience, or the purpose of circumvention of the orderly processing of asylum applicants at a U.S. port of entry; or

(*3*) Is, or at any time since their most recent entry was determined to be, an unaccompanied alien child as defined in 6 U.S.C. 279(g)(2).

(v) *Derogatory information.* If USCIS discovers derogatory information during the adjudication of an application for employment authorization for an alien with a pending asylum application, USCIS may prioritize the alien's asylum application for adjudication.

(2)(i) *Pausing and Restarting Acceptance of Initial Applications for Employment Authorization.* If the average USCIS processing time for adjudicating affirmative asylum applications is greater than 180 days for all applications for asylum currently pending before USCIS for the preceding 90 consecutive days, USCIS will not accept initial applications for employment authorization under §§ 274a.12(c)(8) and 274a.13(a) of this chapter. USCIS will process pending applications for employment authorization under §§ 274a.12(c)(8) and 274a.13(a) of this chapter received prior to the pause. If the average quarterly USCIS processing time for adjudicating affirmative applications is less than or equal to 180 days for a period of 90 consecutive days, USCIS will again accept initial applications for employment authorization under §§ 274a.12(c)(8) and 274a.13(a) of this chapter.

(ii) *Basis for decision of pause.* The Director of USCIS will announce the need to pause or accept initial applications for employment authorization under §§ 274a.12(c)(8) and 274a.13(a) of this chapter based only on the average USCIS processing time for adjudicating affirmative asylum applications as described above. This decision is not subject to discretion.

(iii) *Announcement of pause and publication of processing times.* USCIS will publish on its website the quarterly processing times for affirmative asylum applications. USCIS will announce on its website whether USCIS will accept and whether USCIS has paused the acceptance of initial applications for employment authorization under §§ 274a.12(c)(8) and 274a.13(a) of this chapter and will provide the quarterly processing times supporting the decision made by the Director of USCIS to accept or pause acceptance of initial applications for employment authorizations under §§ 274a.12(c)(8) and 274a.13(a) of this chapter.

(3) The provisions of paragraphs (a)(1) and (2) of this section apply to applications for asylum filed on or after January 4, 1995.

(4) Employment authorization pursuant to § 274a.12(c)(8) of this chapter may not be granted to an alien who fails to appear for a scheduled interview before an asylum officer or a hearing before an Immigration Judge, or a biometrics appointment, unless the applicant demonstrates that the failure to appear was the result of exceptional circumstances.

(b) *Renewal.* Employment authorization will be renewable, in increments to be determined by USCIS, for the continuous period of time necessary for the asylum officer or Immigration Judge to decide the asylum application and, if necessary and the request for review was timely, for completion of any administrative or judicial review. The alien must request renewal of employment authorization on the form and in the manner prescribed by USCIS and according to the form instructions, with the appropriate fee, and must submit biometrics at a scheduled biometrics services appointment, in accordance with § 103.2(b)(9) of this chapter. For purposes of employment authorization, USCIS requires that an alien establish that he or she has continued to pursue an asylum application before an Immigration Judge or sought administrative or judicial review by presenting one of the following, depending on the stage of the alien's immigration proceedings:

(1) If the alien's case is pending in proceedings before the Immigration Judge, and the alien wishes to continue to pursue his or her asylum application, a copy of any asylum denial by USCIS, the USCIS referral notice, or the charging document placing the alien in such proceedings;

(2) If the Immigration Judge has denied asylum, a copy of the document issued by the Board of Immigration Appeals to show that a timely appeal has been filed; or

(3) If the Board of Immigration Appeals has dismissed the alien's appeal, or sustained an appeal by DHS, a copy of the petition for judicial review or for habeas corpus pursuant to section 242 of the Act, date stamped by the appropriate court.

(c) *Termination.* In addition to the termination and revocation provisions under § 274a.14 of this chapter, employment authorization granted under this section will terminate as follows, even if the expiration date specified on the employment

authorization document has not been reached:

(1) immediately following the denial of an asylum application by an asylum officer, unless the case is referred to an Immigration Judge;

(2) on the date that is 30 days after the date on which an Immigration Judge denies an asylum application, unless the alien makes a timely appeal to the Board of Immigration Appeals; or

(3) immediately following denial or dismissal by the Board of Immigration Appeals of an appeal of a denial of an asylum application.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 5. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1105a, 1324a; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 114–74, 129 Stat. 599.

■ 6. Amend § 274a.12 by revising paragraph (c)(8) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(c) * * *

(8) An alien who has filed a complete application for asylum or withholding of deportation or removal pursuant to part 208 of this chapter, where that application remains pending, is eligible to apply for employment authorization under § 208.7 of this chapter. Employment authorization may be granted according to the provisions of § 208.7 of this chapter in increments to be determined by USCIS and will expire on a specified date subject to the provisions regarding termination in 8 CFR 208.7(c) and 274a.14.

* * * * *

■ 7. Amend § 274a.13 by revising paragraphs (a)(1) and (2) to read as follows:

§ 274a.13 Application for employment authorization.

(a) * * *

(1) The approval of applications filed under § 274a.12(c) is within the discretion of USCIS. Where economic necessity has been identified as a factor, the alien must provide information regarding his or her assets, income, and expenses.

(2) An application for an initial employment authorization or for a renewal of employment authorization filed in relation to a pending claim for asylum or withholding of removal must be filed and adjudicated in accordance with § 208.7 of this chapter.

* * * * *

Kristi Noem,

Secretary, U.S. Department of Homeland Security.

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