CENTER FOR IMMIGRATION STUDIES

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

**Re: Removal of the Automatic Extension of Employment Authorization Documents, DHS Docket No. USCIS-2025-0271**

Dear Mr. Good,

The Center for Immigration Studies (CIS) respectfully submits the following public comment to the U.S. Department of Homeland Security (DHS) in response to the Department's interim final rule (IFR), "Removal of the Automatic Extension of Employment Authorization Documents," DHS Docket No. USCIS-2025-0271**,** as published in the Federal Register on October 30, 2025.

CIS is a national, nonprofit, public-interest organization comprised of concerned citizens who share a common belief that our nation's immigration laws must be enforced, and that policies must be reformed to better serve the national interest. CIS examines trends and effects, educates the public on the impacts of sustained high-volume immigration, and advocates for sensible solutions that enhance America's environmental, societal, and economic interests today, and into the future.

## I. Background

The Immigration and Nationality Act (INA) makes it unlawful "to hire, or to recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien … with respect to such employment."[1] The statute defines "unauthorized alien" as an alien who is not either a lawful permanent resident or "authorized to be employed by [the INA] or by the Attorney General."[2] Accordingly, an alien may only be authorized to work through statute, regulation, or authorization otherwise granted by the Department of Justice (DOJ) or DHS.

DHS regulations restrict work authorization to three classes of aliens who are eligible for employment in the United States: 1) aliens who are eligible "incident to status" for any employer, as well as to engage in self-employment, as a condition of the immigration status; 2)

[1] INA § 274a.
[2] INA § 274a(h)(3). The Secretary of Homeland Security, since the enactment of the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135, now also has the authority to authorize an alien for employment in the United States.

aliens who are also authorized to work "incident to status," but generally the authorization is only valid with a specific employer, as a condition of their immigration status; and 3) aliens who are required to apply for a discretionary grant of employment authorization.[3] Certain aliens listed in the first class and all eligibility categories listed in the third class, as well as additional categories specified in the Form I-765 instructions, must properly file an employment authorization document (EAD) application with the U.S. Citizenship and Immigration Services (USCIS) before an alien can receive an EAD and/or employment authorization. Moreover, for aliens included in the first and third classes, USCIS may establish a specific validity period in its discretion.[4]

Once an application is filed, USCIS engages in what it refers to as "pre-processing," which requires USCIS officers to verify the alien's A-number, schedule a biometrics appointment for the alien, and resolve discrepancies related to the applicant's identity or address. USCIS officers will also initiate initial security checks based on the biographical information provided on the EAD. If any national security or public safety threats are revealed through this initial security check, USCIS's database will assign a "hit" to the application. Immigration officers must then resolve or address the "hit" before the application can be adjudicated. USCIS reports that "resolution of some hits can be time consuming and may involve collaboration with law enforcement agencies."[5]

Once an application passes the pre-processing stage, USCIS generally adjudicates EAD applications on a first-come, first-serve basis. To adjudicate an application, an immigration service officer (ISO) must review the applicant's evidence of eligibility and conduct additional security checks, in the agency's discretion. [6]

USCIS, in its discretion, may also issue requests for evidence (RFE) or a notice of intent to deny (NOID) to allow applicants an opportunity to address any deficiencies in their application or rebut a presumption of eligibility. USCIS will issue a final decision on the issue underlying the RFE or NOID after it receives a response from the applicant. [7]

Upon final review of the adjudication, the ISO must then determine if the applicant generally warrants a favorable exercise of discretion. Only then can an EAD application be approved.

Temporary employment authorization and EADs are not valid indefinitely but expire after a specified time period. Affected aliens must obtain a renewal of their employment authorization or EAD before the expiration date stated on their current EAD, or they will lose eligibility to

[3] *See* 8 C.F.R. § 274a.12(a)-(c).
[4] *See* 8 C.F.R. § 274a.12(a)-(c).
[5] 90 Fed. Reg. 48799 (Oct. 30, 2025).
[6] *Id*.
[7] *Id*.

work in the United States. This is also true for aliens who are eligible to work "incident of status" whose EAD expiration dates coincide with the expiration date of their immigration status.[8] To renew employment authorization and/or obtain a new EAD, an alien must file a renewal EAD application with USCIS. Typically, USCIS has recommended filing a renewal application up to 180 days before an alien's active EAD expires to avoid a lapse in employment authorization.[9]

To protect renewal applicants from gaps in employment authorization when USCIS was not able not adjudicate a renewal application within 90 days of receipt, USCIS historically would issue an "interim EAD" with a validity period of up to 240 days to an eligible alien on request. In November 2016, DHS eliminated this practice and issued a regulation that, instead, created an 180-day automatic extension period for all eligible renewal applicants.[10] This reform addressed the same concern but eliminated agency processing of interim EADs.

To address the massive increase in EAD requests during the Biden administration, spurred in part by the COVID-19 pandemic and that administration's historic expansion of Temporary Protected Status (TPS) and other humanitarian portfolios,[11] USICS issued multiple *temporary* final rules to extend the automatic extension period from 180 days to 540 days.[12] The agency issued a final rule in December 2024 to *permanently* increase the regulatory automatic extension period from 180 days to 540 days for certain renewal applicants.[13] Under that policy, the extension automatically terminates up to 50 days after the expiration date on the face of the EAD or upon issuance of notification of a decision denying the renewal request, whichever is earlier.[14]

DHS, with this IFR, is amending 8 C.F.R. § 274.13(d)-(e) to end its policy of providing automatic EAD extensions for covered renewal applicants. This IFR does not impact automatic

[8] Some aliens authorized to work incident to status, such as asylees, refugees, and TPS beneficiaries, may have immigration status that confers employment authorization that continues past the expiration date stated on their EADs.
[9] *See, e.g.,* 81 Fed. Reg. 82398, 82456 (Nov. 18, 2016).
[10] *See* 81 Fed. Reg. 82398 (Nov. 18, 2016).
[11] *See* U.S. Citizenship and Immigration Servs. Ombudsman, Annual Report 2023 (Jun. 30, 2023) (citing the "increased demand" for TPS and other humanitarian benefits as a significant challenge for USCIS, stating, "processing work authorization for these populations in itself is a never-ending task for the agency."); U.S. Dep't of Homeland Security, U.S. Citizenship and Immigration Servs., *Number of Service-wide Forms By Quarter, Form Status, and Processing Time* (July 1-Sept. 30, 2023) (showing that USCIS approved almost 3 million Forms I-765 during the data period). *See also* Annual Statistical Report FY2023, p.14 (acknowledging that in "FY 2023, USCIS received over 3.5 million applications for employment authorization, 50 percent more than the previous year, and completed over 3.4 million applications, 45 percent more than in FY 2022.").
[12] 87 Fed. Reg. 26614 (May 4, 2022).
[13] 89 Fed. Reg. 101208 (Dec. 13, 2024).
[14] *Id*.

extensions of EADs and/or employment authorization created by law or Federal Register notices, including those for TPS applicants and beneficiaries pursuant to section 244 of the INA.

DHS issued this IFR to "prioritize the proper vetting and screening of aliens before granting a new period of employment authorization and/or a new EAD…."[15] DHS stated that it is concurrently working to "reduce frivolous, fraudulent or otherwise non-meritorious EAD filings to free up adjudicatory and other resources to better ensure national security and program integrity."[16]

## II. DHS Should End the 540-Day Automatic Extension Period for Renewal EAD Applications.

CIS supports DHS's IFR to end automatic extension periods for renewal EAD applications. This rule is a prudent and necessary correction that restores the integrity of the employment authorization process, ensures appropriate vetting before work authorization is renewed, and aligns DHS policy with statutory intent to protect the interests of U.S. workers and national security. Moreover, the rule reinforces congressional intent and the statutory framework governing work authorization.

As explained in detail in this IFR, automatic extensions of employment authorization allow individuals to continue working even when DHS has not yet adjudicated their eligibility for renewal. While such extensions were originally justified as a temporary measure to alleviate adjudication backlogs, their continuation undermines the USCIS's ability to conduct meaningful review of applicants who have been working in the United States.

By requiring adjudication *before* renewal, the IFR ensures that DHS can confirm continued EAD eligibility, reverify identity, and complete updated security and background checks. These measures strengthen public confidence that work authorization is granted only to individuals who remain eligible under the INA and continue to deserve an immigration officer's grant of discretion.

This change also helps deter potential fraud and abuse by preventing individuals from remaining in the workforce for extended periods under an expired or pending status without final adjudication. The Government Accountability Office (GAO)[17] and reports that between 54 and 68 percent of benefit fraud cases each year (from fiscal years 2016 through 2021) originated

[15] 90 Fed. Reg. 48799 (Oct. 30, 2025).
[16] 90 Fed. Reg. 48799, 48806 (Oct. 30, 2025).
[17] U.S. Gov't Accountability Office, GAO-22-105322, *U.S. Citizenship and Immigration Services, Additional Actions Needed to Manage Fraud Risks*, p. 12. (Sept. 2022).

from USCIS adjudicators and similar agency sources.[18] But of course, fraud risk and detected fraud are likely undermeasured due to limitations in data systems and resource constraints.

Moreover, the automatic extension period has made it more difficult for DHS to rescind benefits given to inadmissible and/or removable aliens when appropriate. While this IFR by itself does not create any new enforcement authorities, it removes a bureaucratic buffer that gave tens of thousands of removable aliens cover while their renewal applications were pending before USCIS. Under the IFR's framework, however, if an alien's EAD validity period lapses, their records will now show as "unauthorized" in DHS systems (e.g., SAVE, E-Verify, PCQS) earlier, giving immigration officers fewer administrative obstacles in issuing notices to appear (NTAs) or executing removals.

Some commenters have argued that ending automatic extensions will cause many renewal applicants to lapse in work authorization through no fault of their own, harming employers and eligible workers. While that risk exists, the integrity of the immigration and work-authorization system is paramount. The rule ensures that work authorization is renewed only after full eligibility is confirmed. Such safeguards are essential to maintaining the credibility and enforceability of the employment eligibility verification system. Moreover, such risks can be mitigated by efficient management of USCIS's immigration benefit portfolio (see section III).

Moreover, DHS retains its authority, even with this IFR, to implement internal adjudicative efficiencies and expedited review procedures to prevent undue hardship for timely filers on case-by-case bases. Those measures, however, should not include permanently substituting the fundamental requirement of prior adjudication. This IFR restores the proper relationship between statute and policy and better fulfills DHS's responsibilities under 8 U.S.C. § 1324a to ensure that only individuals that are eligible for work authorization are allowed to continue their employment in the United States.

## III. DHS Should Rescind EAD Eligibility from Aliens the INA Does Not Affirmatively Provide.

To promote fairness, integrity, and efficiency in the immigration system, DHS should make EADs available only to aliens whom the Immigration and Nationality Act (INA) affirmatively authorizes eligibility. This proposal would be both faithful to the statutory framework and preserve the integrity of the employment-verification system Congress established. Moreover, eliminating work authorization eligibility categories will mitigate the risk that USCIS will fail to

[18] U.S. Gov't Accountability Office, *GAO-22-105322, U.S. Citizenship and Immigration Services, Additional Actions Needed to Manage Fraud Risks*, p. 18-19. (Sept. 2022).

issue EAD renewal applications within reasonable timeframes by eliminating resource-draining portfolios that are not authorized by statute.

Article I of the U.S. Constitution gives Congress plenary power over immigration, and Congress has established an extensive scheme for the admission of immigrant and nonimmigrant foreign workers into the United States through the creation of numerous visa programs.[19] Congress has never conferred nor delegated the authority to DHS to create employment eligibility for classes of aliens not already provided by law. Designating new classes of eligible populations undermines the deliberate scheme created by Congress which has contemplated intricate social, economic, and foreign policies beyond the scope of DHS's interests and mission.

Congress has repeatedly delineated, with specificity, the classes of aliens eligible to engage in employment in the United States and it has expressly restricted employment for all others absent statutory authorization.[20] Where Congress intended to authorize employment incident to status or to permit the Secretary to grant employment authorization, it did so explicitly and narrowly. Accordingly, the INA affirmatively authorizes employment where it explicitly links a status to work eligibility (e.g., refugees, asylees, TPS, and certain nonimmigrants). Lawful permanent residents are authorized to work via INA § 274A(h)(3), which explicitly excludes this category of immigrant from the definition of "unauthorized alien."[21]

Some categories, on the other hand, are not authorized to work by Congress, but rather derive their work authorization eligibility by DHS regulation or policy. These categories include parolees,[22] asylum applicants (with pending applications),[23] deferred action recipients (including Deferred Action for Childhood Arrivals beneficiaries),[24] spouses of certain categories of nonimmigrants (H-4, L-2, E-2 dependents),[25] F-1 nonimmigrant visa holders working in the United States under post-completion optional practical training (OPT), and aliens with pending adjustment of status applications.[26]

The Department, however, exceeds its delegated authority when it creates new, extra-statutory eligibility categories by regulation or policy that effectively rewrite Congress's detailed scheme.

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[19] *See* 8 U.S.C. § 1101 et seq.
[20] See, e.g., INA §§ 208(c)(1)(B), 209(a)(1), 214(a)(1), 274A(h)(3).
[21] INA § 274a(h)(3) states that, "'unauthorized alien' means, with respect to the employment of an alien at a particular time, that the alien is not at the time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this chapter or by the Attorney General."
[22] 8 C.F.R. § 274a.12(c)(11).
[23] 8 C.F.R. § 274a.12(c)(8).
[24] 8 C.F.R. § 274a.12(c)(14).
[25] 8 C.F.R. §§ 274a.12(a)(18), (c)(2), (c)(26)).
[26] 8 C.F.R. § 274a.12(c)(9).

Contrary to DHS's regulatory position (which DHS disavowed in litigation[27]), Congress did not confer such authority with the enactment of the definition of "unauthorized alien," in section 1324a of the INA. Section 1324a was enacted by the *Immigration Reform and Control Act of 1986* ("IRCA")[28] to, for the first time, criminalize and impose civil sanctions on the act of hiring an alien who is not authorized to work in the United States. Section 1324a(h)(3) defines those aliens that it is unlawful for an employer to hire. This section, however, is merely definitional and refers to the authorities the Secretary already possesses through enactment of other provisions in the INA. It does not itself grant any authority.[29]

Rather, since the enactment of this position, Congress has specifically extended and limited DHS's authority to grant work authorization to similar classes of aliens on numerous occasions.[30] Interpreting the definition of "unauthorized alien" to confer such broad authority would also render Congress's later enactments superfluous and violate the non-delegation doctrine as an impermissible delegation of legislative authority without sufficient intelligible principles to guide the Secretary.[31]

Automatic extensions were practical accommodations given USCIS's high processing times. However, the backlog itself is a symptom of over-expansion of work-authorization categories and filings, which contributes to uncontrolled immigration flows and potential abuse. CIS recommends that DHS, instead, focus its limited administrative resources on adjudicating benefits that are expressly authorized by statute.

Providing EADs to an overly broad population also risks undermining the integrity of the entire immigration system by blurring the line between individuals whom Congress has affirmatively made eligible for work and those who lack any statutory basis for employment. When EADs are

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[27] "Section 1324a . . . cannot reasonably be interpreted to have 'brought about the enormous and transformative expansion' in the Secretary's authority. . . ." Rep. Br. for the Pet'rs, Dep't of Homeland Security, et al. v. Regents of the Univ. of Cal., 140 S. Ct. 1891 (2020) (No. 18-587) (quoting Util. Air Regulatory Grp. v. Envtl. Prot. Agency, 573 U.S. 302, 324 (2014)).

[28] Pub. L. No. 99–603, § 101, 100 Stat. 3445 (creating the new section § 274a of the INA codified at 8 U.S.C. § 1324a).

[29] *See W. Union Tel. Co. v. Fed. Commc'ns Comm'n*, 665 F.2d 1126, 1136–37 (D.C. Cir. 1981) (holding a section was "only definitional" where it began with "as used in this section" and contained only definition subsections); *Texas v. United States*, 787 F.3d 733, 760 (5th Cir. 2015), aff'd by an equally divided court, 136 S. Ct. 2271 (2015) (observing § 1324a(h)(3) was merely definitional).

[30] For example, the Omnibus Consolidated Appropriations Act 1997 provided that "[a]n applicant for asylum is not entitled to employment authorization, but such authorization may be provided under regulation by the Attorney General. Pub. L. No. 104-208, § 604, 110 Stat. 3009, 3009-693.

[31] The Supreme Court "repeatedly [has] said that when Congress confers decision making authority upon agencies Congress must 'lay down by legislative act an intelligible principle to which the person or body authorized to act' is directed to conform." *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 472 (2001) (quoting J. W. Hampton, Jr., & Co. v. United States, 276 U.S. 394, 409 (1928); *see also Indus. Union Dep't, AFL-CIO v. Am. Petroleum Inst.*, 448 U.S. 607, 685(1980) (Rehnquist, J. concurring) ("[The nondelegation doctrine] ensures . . .that important choices of social policy are made by Congress, the branch of our Government most responsive to the popular will.").

issued too expansively, they function as de facto "breeder documents," giving recipients downstream access to driver's licenses, state IDs, and other benefits that rely on the EAD as proof of lawful presence or work eligibility. This dilutes the meaning of lawful authorization, weakens incentives to maintain compliance with statutory requirements, and creates vulnerabilities that can be exploited by fraudulent actors.

CIS strongly recommends DHS amend its regulations and policies to limit employment authorization eligibility to only those categories Congress has explicitly authorized. A carefully bounded EAD framework, tied strictly to categories Congress has authorized, is essential to maintain public confidence, ensure accurate vetting, and protect the integrity of U.S. identity, employment, and immigration systems.

## IV. DHS Must Increase Worksite Audits.

CIS strongly recommends that DHS expand its worksite auditing to strengthen integrity across employment-based nonimmigrant categories, particularly where past reviews have uncovered patterns of fraud, misrepresentation, and noncompliance. These efforts will directly support USCIS's ability to manage its EAD portfolio more efficiently by ensuring that employers petition for immigration benefits only for bona fide, congressionally authorized purposes.

By preventing unauthorized or inappropriate use of employment authorization at the worksite, DHS can decrease the volume of time-sensitive renewal filings that strain the agency's ability to maintain predictable processing times. Robust worksite enforcement efforts are necessary to ensure the integrity of labor and immigration laws and promote a fair and healthy domestic labor market. Robust, risk-based auditing, coordinated between USCIS, ICE, and DOL, would deter employers from abusing nonimmigrant visa programs by ensuring that attestations on wages, job duties, and worksite locations reflect actual practice. When DHS verifies compliance at the employer level, it reduces downstream fraud, misuse, and unauthorized employment that otherwise inflate EAD demand.

Regular audits also promote fair competition for U.S. workers by identifying underpayment, unlawful benching, and unauthorized client-site placements, all of which undermine statutory protections and Congressional intent. By expanding its audit capacity and publishing transparent enforcement metrics, DHS can reinforce program integrity, restore public confidence, and ensure that temporary worker programs operate as intended: to supplement, not displace, the domestic workforce.

Finally, worksite audits promote data accuracy and reduce identity-related fraud, both of which drive unnecessary EAD filings. When employer records are verified against DHS and SSA systems, discrepancies and fraudulent identities can be detected earlier in the employment lifecycle, reducing the number of individuals who file for EADs under multiple identities or

based on questionable eligibility claims. This improves the overall integrity of the EAD portfolio and allows USCIS adjudicators to focus their resources on legitimate applications.

## V. DHS Should Add an Appropriate Categorical Exclusion to its National Environmental Policy Act (NEPA) Procedures to Strengthen Its Position that This Rule Does Not Require Environmental Analysis under NEPA.

CIS strongly recommends that DHS add an appropriate categorial exclusion to its NEPA procedures. Doing so will strengthen DHS's position that this rule does not require an environmental analysis under NEPA.

NEPA requires federal agencies to assess the environmental effects of their proposed actions prior to making decisions. Title I of NEPA contains a Declaration of National Environmental Policy. This policy requires the federal government to use all practicable means to create and maintain conditions under which man and nature can exist in productive harmony. Section 102 in Title I of the Act requires federal agencies to incorporate environmental considerations in their planning and decision-making through a systematic interdisciplinary approach. Specifically, all federal agencies are to prepare detailed statements assessing the environmental impact of and alternatives to major federal actions significantly affecting the environment.[32]

These statements are commonly referred to as Environmental Impact Statements (EIS) and Environmental Assessments (EA). The EA is conducted to determine whether an EIS is needed, if the agency determines that the proposed action will not have a significant impact on the environment, it may issue a Finding of No Significant Impact ("FONSI").[33]

Agencies do not have to conduct an EA or EIS for types of actions that they have found, through prior experience, are of a category that can be expected not to cause significant impacts. In such cases, agencies may cite a "categorical exclusion" instead.[34]

To invoke such a categorical exclusion, agencies adopt NEPA procedures which direct them how to implement NEPA, using the guidance of the Council for Environmental Quality, and these procedures include categorical exclusions.[35] The invocation of a categorical exclusion prior to adopting an action, such as a new regulation, is the agency's NEPA compliance.

DHS should note that, according to NEPA's framework, when DHS invokes a categorical exclusion, it is not doing an environmental analysis, rather it is recognizing a category of action that it has established already does not have environmental impacts. That is, the proper

[32] 42 U.S.C. § 4332(C).
[33] *See* 40 C.F.R. §§ 1501.5, 1501.6.
[34] 40 C.F.R. §§ 1501.4(a)(2), 1508.1(d).
[35] *See* 40 C.F.R. §§ 1507.3, 1508.1(d).

invocation of categorical exclusion is not a matter of deciding *ab initio*, without conducting an EA, that a given action does not have an environmental impact, and, therefore, using the reasoning that, because this action does not have an environmental impact, it must be categorically excluded, and then citing a categorical exclusion from its list of available options that must fit the bill.

In this IFR, DHS's NEPA implementation process was lacking (though CIS agrees that this rule does not have a significant environmental impact). DHS stated that:

> This final rule is strictly administrative and procedural. DHS has reviewed this IFR and finds that no significant impact on the environment, or any change in environmental effect will result from the amendments being promulgated in this final rule.
>
> Accordingly, DHS finds that the promulgation of this final 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.[36]

By stating that DHS "has reviewed this IFR" and finds "no significant impact," DHS is, to some extent, implying it has conducted an EA, though, it has clearly not conducted an EA.[37] DHS's reasoning here is that it analyzed the rule, found it had no impacts, and therefore, it fits within categorical exclusion A3. This sequence has the proper process backwards. DHS stands on firmer ground by stating its conclusion first that the rule is "strictly administrative and procedural" before concluding that it fits within categorical exclusion A3, which covers "strictly administrative and procedural" rules.

The problem, however, is that DHS never defines in its NEPA procedures, what "strictly administrative and procedural" means. Furthermore, DHS has repeatedly cited this precise categorical exclusion and claimed rules were "strictly administrative and procedural" when those rules greatly increased immigration (which this rule does not).[38]

Immigration policies that increase population clearly have a significant impact that must be analyzed under NEPA. In fact, NEPA itself was explicitly concerned with population growth, the first concern mentioned in NEPA's "Congressional declaration of national environmental policy":

> The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the

[36] 90 Fed. Reg. 48799, 48819 (Oct. 30, 2025).
[37] *Id*.
[38] *See, e.g.,* 89 Fed. Reg. 103054, 103193 (Dec. 18, 2024).

> overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.[39]

Therefore, DHS should never bypass all NEPA analysis by claiming that rules which greatly expand immigration are "strictly administrative and procedural." However, DHS has invoked this particular categorical exclusion for proposed rulemakings that expand immigration without any analysis, inappropriately in those cases. DHS's inability to use any reasoning that could not be applied to any rule adopted by an agency, including those that greatly expand the U.S. population, demonstrates its need to adopt an appropriate categorical exclusion.

Currently, in accordance with President Trump's Executive Order (E.O.) 14154, *Unleashing American Energy*, all agencies including DHS are adopting new NEPA procedures.[40] DHS, however, does not currently have any categorical exclusions that relate to immigration specifically nor has it ever analyzed the effects of immigration policy beyond the effects of infrastructure built to further its immigration enforcement efforts. DHS should use the opportunity of adopting new NEPA procedures to correct this error.

Rules which do not increase the population of the United States, like this rule, would clearly fit within a category of actions that actually do not have environmental impacts. Categorical exclusion A3, however, has repeatedly been invoked for actions that have had very significant effects on the environment, because it is so broad as to be meaningless, and therefore, would be vulnerable to a meaningful legal challenge. CIS therefore recommends that DHS strengthen the final version of this rule by adopting NEPA procedures that draw a distinction between rules that increase immigration (and therefore do have environmental impacts) and rules that do not (and where the invocation of such categorical exclusions are appropriate).[41]

## VI. Conclusion

DHS's decision to end the 540-day automatic extension period represents a necessary and appropriate course correction that restores the integrity of the employment authorization process, ensures that all renewal applicants undergo proper vetting before receiving continued work authorization, and brings agency practice back into alignment with Congress's statutory design. Maintaining long, automatic extensions without individualized review undermines public

[39] 42 U.S. § 4331 (a).
[40] *See* Memorandum for Heads of Federal Departments and Agencies, *Implementation of the National Environmental Policy Act*, from Katherine Scarlett, Feb. 19, 2025.
[41] *See, e.g.,* 90 Fed. Reg. 42070, 42014 (Aug. 28, 2025).

confidence, strains USCIS adjudicatory resources, and creates vulnerabilities in identity management and national-security screening systems. By contrast, restoring normal renewal procedures reinforces the principle that employment authorization should be renewed only after DHS confirms eligibility and conducts necessary security and fraud checks.

Similarly, DHS should rescind employment authorization eligibility for categories that the INA does not affirmatively provide. Limiting EADs to congressionally authorized groups is essential to preserving the rule of law, maintaining accurate and reliable vetting systems, and safeguarding the integrity of U.S. identity, employment, and immigration processes. Overbroad or extra-statutory EAD categories undermine these objectives and dilute the protections Congress put in place for U.S. workers.

Strengthening worksite audits is a vital complement to these reforms. Robust employer-level enforcement reduces incentives to misuse discretionary work authorization, curbs unnecessary EAD filings and serial renewals, and enhances DHS's ability to detect fraud, verify identity, and ensure compliance across the employment ecosystem. By expanding worksite audits, DHS supports USCIS's ability to manage its EAD portfolio effectively, allocate its resources to statutorily grounded adjudications, and uphold the integrity of the immigration system as a whole.

Finally, CIS recommends that DHS update its NEPA procedures to add a categorical exclusion to cover policies that it does not believe will increase immigration levels. Citing to a more appropriate categorical exclusion will strengthen DHS's rulemaking in accordance with NEPA requirements.

Taken together, these measures will reinforce congressional intent, protect national security and U.S. workers, restore confidence in the employment authorization process. Importantly, this reform will ensure that USCIS administers immigration benefits with the fairness and accountability federal law requires.