CENTER FOR IMMIGRATION STUDIES

August 4, 2026

Security and Public Safety Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
5900 Capital Gateway Drive
Camp Springs, MD 20746

Re: Clarification of Discretionary Employment Authorization for Certain Aliens, DHS Docket No. USCIS-2026-0067

To Whom It May Concern,

The Center for Immigration Studies (CIS) respectfully submits the following public comment to the U.S. Citizenship and Immigration Services (USCIS) in response to the Department of Homeland Security (DHS)'s notice of proposed rulemaking (NPRM), *Clarification of Discretionary Employment Authorization for Certain Aliens*, DHS Docket No. USCIS-2026-0067**,** as published in the Federal Register on June 5, 2026.

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

Congress created a comprehensive framework governing when aliens may work in the United States. Under the Immigration and Nationality Act (INA), some aliens are authorized to work incident to their immigration status, while others may work only after DHS approves an application for employment authorization.

Moreover, some statutory provisions specifically require the provision of employment authorization.[1] Others allow the Secretary of Homeland Security to grant employment authorization as a matter of discretion.[2] DHS has maintained the legal position that INA sections

[1] *See, e.g.,* INA § 101(i)(2) (requiring T nonimmigrants to be employment authorized); INA § 214(c)(2)(E) (requiring spouses of L nonimmigrants to be employment authorized); INA § 214(e)(2) (requiring spouses of E treaty traders/investors to be employment authorized; INA § 214(p)(3)(B) (requiring U nonimmigrants to be employment authorized).
[2] *See, e.g.,* INA sec. 214(p)(6).

103(a), 214(a)(1), 274A(h)(3) provide the Secretary general authorities to establish discretionary employment authorization categories. Exercising these authorities, DHS regulations identify numerous classes of aliens who may apply to USCIS for an Employment Authorization Document (EAD).[3]

Employment authorization under 8 C.F.R. § 274a.12(c) is generally not automatic. An alien must submit Form I-765, establish eligibility under a designated regulatory category, and, where applicable, demonstrate that the application warrants a favorable exercise of discretion. An EAD issued under these provisions is temporary and does not independently confer lawful immigration status, protect an alien from removal, or create a right to remain permanently in the United States. Instead, it permits employment for a limited period based on an underlying status, application, or exercise of prosecutorial discretion.

On June 5, 2025, DHS issued this notice of proposed rulemaking to limit and clarify eligibility for discretionary employment authorization for aliens paroled into the United States temporarily for urgent humanitarian reasons or significant public benefit, who have been granted deferred action, or against whom a final order of removal exists and who are temporarily released from custody on an order of supervision. DHS further proposes to specify that aliens applying for employment authorization who admit to committing, have been arrested for, or have been convicted of certain criminal acts do not warrant a favorable exercise of discretion unless there are significant countervailing public interests, which may include assisting law enforcement activity in the United States.[4]

DHS explained that it issued this proposed rulemaking because current rules "do not adequately reflect DHS's enforcement mission and priorities."[5] DHS has also acknowledged that obtaining employment authorization in the United States "has long been, and continues to be, a significant incentive for aliens to migrate to (legally and illegally) and remain in the United States."[6] As such, employment authorization must be "carefully regulated to maintain the integrity of the U.S. immigration system."[7]

CIS generally agrees with DHS that the proposed rule will minimize the risk of disadvantaging American workers, reduce incentives to migrate to and remain in the United States illegally, and promote the overall integrity of the United States.[8] Specifically, CIS strongly urges DHS to:

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[3] *See* 8 C.F.R. §§ 274a.12(c), 274a.13.
[4] 91 Fed. Reg. 34352 (Jun. 5, 2026).
[5] *Id*. at 34376 (Jun. 5, 2026).
[6] 85 Fed. Reg. 74196, 74208 (Nov. 19, 2020).
[7] *Id*.
[8] *See* 91 Fed. Reg. 34352 (Jun. 5, 2026).

1. Repeal 8 C.F.R. § 274a.12(c)(11) to eliminate employment eligibility for parolees;
2. Amend 8 C.F.R. § 274a.12(c) to require officers to assign criminal activity significant negative weight when exercising discretion authority to grant an EAD application;
3. Amend 8 C.F.R. § 274a.13 to require all EAD applicants, including renewal applicants, to submit biometrics;
4. Amend 8 C.F.R. § 274a.14 to require an EAD to automatically terminate if the alien receives a final order of removal or the underlying basis for their EAD has been denied, or rescinded; and
5. Amend 8 C.F.R. § 274a.12(c)(18) to restrict EAD eligibility from aliens released from ICE custody on orders of supervision (OSUP) unless DHS has determined that removal is impracticable because all countries from which DHS requested travel documents have failed to issue such documents, the alien demonstrates economic necessity and that the alien does not have any relatives or sponsor who are able to provide financial support, and the alien, if applying for renewal of employment authorization in this category is employed or seeking employment with a U.S. employer participating in good standing in E-Verify.
6. Amend 8 C.F.R. § 274a.12(c)(14) and (18) to limit the validity of employment authorization for deferred action recipients and aliens released on OSUP to one year.

CIS believes these reforms will both strengthen the integrity of the immigration system and better protect U.S. workers from unfair or unnecessary employment competition.

II. DHS Should Repeal 8 C.F.R. § 274a.12(c)(11) to Eliminate Employment Eligibility for Parolees.

DHS should repeal 8 C.F.R. § 274a.12(c)(11), which makes any alien paroled into the United States eligible to apply for employment authorization. The INA does not require DHS to issue employment authorization documents to aliens paroled into the United States, and the availability of employment authorization has created a significant pull factor for illegal immigration into the United States at times when mandatory detention under or third country return under INA § 235 is unavailable or otherwise impracticable.[9]

Parole is a narrow, temporary mechanism that permits an otherwise inadmissible alien to enter or remain physically present in the United States "only on a case-by-case basis for urgent

[9] *See* INA § 212(d)(5)(A); *Florida v. United States*, Case 3:21-cv-01066-TKW-ZCB (Mar. 8, 2023) ("The unprecedented 'surge' of aliens that started arriving at the Southwest Border almost immediately after President Biden took office and that has continued unabated over the past two years was a predictable consequence of these [policy changes, including paroling aliens en masse out of detention and into the interior of the United States with 'alternatives to detention']."

humanitarian reasons or significant public benefit."[10] Congress further specified that parole "shall not be regarded as an admission," and that once its purposes have been served, the alien generally must be returned to custody and treated according to the same immigration status the alien held before parole.[11] Parole therefore is not an immigration status, much less an employment based immigration program.

Nevertheless, DHS regulations permit any alien paroled under INA § 212(d)(5) to seek unrestricted employment authorization.[12] Because such authorization is discretionary, however, eliminating paragraph (c)(11) would not deprive parolees of employment authorization granted by Congress or incident to a lawful immigration status. It would simply end an administratively created benefit that DHS has appended to temporary permission to enter and remain in the country.

The current regulation improperly transforms parole into a means of admitting foreign labor outside the employment-based classifications established by Congress. The INA contains numerous detailed provisions governing the admission and employment of foreign nationals.[13] Those provisions impose eligibility criteria, numerical limitations, labor market protections, employer obligations, and, for some classifications, requirements designed to prevent adverse effects on U.S. workers.[14] Parole based employment authorization bypasses that statutory framework because it does not require a employer to petition for the alien, a labor condition application or labor certification, a showing that qualified U.S. workers are unavailable, payment of prevailing wages, or compliance with an applicable numerical cap.[15]

That result is particularly difficult to reconcile with parole's limited purpose. A determination that an alien's temporary presence would serve an urgent humanitarian reason or significant public benefit does not establish that the alien's participation in the domestic labor market would advance the same purpose. Nor does it establish that employment is necessary to accomplish the purpose for which parole was granted.

The regulation also creates incentives for illegal immigration to the United States at times when detention capacity is inadequate and prompt removal or return to a third country is unavailable, politically unappealing, or otherwise operationally impracticable. Under those conditions, a prospective migrant may anticipate that, after crossing the border, he or she will be released on parole and permitted to seek unrestricted employment under 8 C.F.R. § 274a.12(c)(11). That

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[10] INA § 212(d)(5)(A).
[11] *Id.*
[12] 8 C.F.R. § 274a.12(c)(11).
[13] *See, e.g.,* INA §§ 101(a)(15)(H), 212(a)(5)(A), 212(n), 214(c), (g).
[14] *Id*.
[15] *See* INA § 212(a)(5)(A).

expectation substantially increases the economic value of reaching the United States, even for an alien who has no lawful basis to enter and may ultimately be ordered removed.

This incentive helped fuel the unprecedented levels of migration experienced during the Biden administration, when DHS combined limited immigration enforcement with the widespread parole of inadmissible aliens into the interior. Between October 2021 and December 2024, CBP reported more than 9 million encounters.[16] Providing released parolees with a relatively direct path to employment authorization predictably increased the rewards associated with illegal entry. DHS should eliminate that incentive by making clear that release on parole is merely a temporary authorization to enter the country, not an employment-based immigration program.

Repealing 8 C.F.R. § 274a.12(c)(11) would also conserve limited agency resources. Each parole-based EAD application submitted requires USCIS to accept, review, adjudicate, and produce an employment authorization document, if approved. Eliminating this eligibility category would allow USCIS to devote administrative resources to benefits and employment classifications that Congress expressly established. It would also eliminate complications arising when parole terminates before the expiration date of a parolee's employment authorization document. INA § 212(d)(5)(a) allows DHS to terminate an alien's parole at any time.

Accordingly, DHS should repeal 8 C.F.R. § 274a.12(c)(11) and make conforming amendments throughout its regulations and guidance. The final rule should clarify that parole does not establish eligibility for employment authorization. Any parolee who independently qualifies for employment authorization under another statutory or regulatory category could continue to apply under that separate basis. This approach would restore parole to its intended temporary and exceptional function, respect the employment-based classifications chosen by Congress, protect the integrity of the domestic labor market, and reduce unnecessary administrative burdens.

III. DHS Should Require Officers to Give an EAD Applicant's Criminal Activity Significant Negative Weight When Exercising Discretion to Issue an EAD.

CIS strongly recommends that DHS amend its regulations to prohibit officers from favorably exercising discretion for the approval or renewal of discretionary employment authorization applicants who have been convicted of criminal offenses or who have admitted to committing a violent or dangerous crime. This general discretionary bar should apply even if he or she has never been formally arrested, charged, indicted, or convicted, or if there is evidence of the alien's membership in a gang or terrorist organization. CIS agrees that regulations should require that

[16] U.S. Customs & Border Prot., *Stats and Summaries, Southwest Land Border Encounters* (Jul. 16, 2025); H. Comm. on Homeland Sec., *Border Crisis Startling States, Final Full Month of Biden-Harris Border Crisis Brings Total Encounters of Aliens on the Terrorist Watchlist to 400 Since FY* 2021 (Jan. 2025).

officers only favorably exercise discretion in such cases when significant countervailing public interests exist.

DHS should not use its discretionary authority to grant continued access to the U.S. labor market to aliens whose criminal conduct demonstrates that they pose a danger to the public or have shown a disregard for the laws of the United States. Accordingly, USCIS officers should be required to consider criminal activity as a heavily negative factor for all categories of employment authorized under 8 CFR § 274a.12(c) (other than (8), (19), (20), (22), and (24)), including aliens granted deferred action based on Deferred Action for Childhood Arrivals (DACA), a bona fide T nonimmigrant status application or U nonimmigrant status petition, or a waitlisted U nonimmigrant status petition).

Employment authorization is a valuable privilege that permits an alien to compete directly with American workers and obtain the practical benefits associated with lawful employment. DHS should reserve that privilege for aliens whose conduct is consistent with the public interest. By eliminating employment authorization eligibility for criminal aliens, gang members, and terrorists, DHS would be creating a disincentive for aliens to engage in such conduct or affiliate themselves with gangs or terrorist organizations.

Aliens who are eligible for discretionary EADs do not have a general right to employment authorization merely because they are physically present in the United States and have filed an application for an immigration benefit. Rather, in these cases, DHS retains substantial authority to establish eligibility regulatory restrictions that advance immigration enforcement, public safety, and the integrity of the immigration system.[17]

DHS should create a categorical regulatory bar would be preferable to an open-ended, case-by-case balancing test for serious criminal convictions. Such a rule would promote consistent adjudications, conserve USCIS resources, and prevent similarly situated applicants from receiving different outcomes depending on the individual adjudicator. It would also ensure that economic need or the passage of time does not outweigh criminal conduct that Congress has identified elsewhere in the INA as grounds of inadmissibility, deportability, detention, or ineligibility for immigration relief.

The current case-by-case framework also creates the possibility that an alien may retain or repeatedly renew an EAD despite having committed an offense that makes the alien removable or demonstrates that the alien poses a threat to the community. That outcome is particularly difficult to justify when the alien's underlying immigration status or pending application does not itself confer a statutory right to work. Continuing to grant employment authorization under those circumstances weakens immigration enforcement by allowing an alien to establish deeper

[17] *See* INA §§ 103(a), 287(b); 6 U.S.C. § § 111(b)(1)(F), 112, 271(a)(3).

economic ties to the United States while removal proceedings, appeals, or collateral applications remain pending.

DHS should therefore amend 8 C.F.R. §§ 274a.12 and 274a.13 to require that officers give significant negative weight to criminal conduct when exercising discretion to issue an EAD. This reform should generally bar aliens convicted of criminal offenses or who have admitted to committing a violent or dangerous crime, even if he or she has never been formally arrested, charged, indicted, or convicted, or if there is evidence of the alien's membership in a gang or terrorist organization from discretionary employment authorization eligibility, notwithstanding exceptional circumstances. By adopting these reforms, DHS would ensure that discretionary employment authorization serves the government's responsibilities to protect public safety, enforce the immigration laws, and does not create unnecessary employment competition for U.S. workers.

IV. Should Require All EAD Applicants to Submit Biometrics, Including Renewal Applicants.

CIS supports DHS's proposal to require all employment authorization applicants, including renewal applicants, to submit biometrics. Employment authorization permits an alien to participate lawfully in the U.S. labor market and provides the alien with a secure identity document that employers may accept as evidence of both identity and authorization to work. DHS therefore should not issue or renew an EAD without first obtaining current biometrics sufficient to verify the applicant's identity, conduct appropriate criminal and national-security screening, and ensure that the document is issued to the person who applied for it.

DHS already possesses broad authority to impose this requirement. Under 8 C.F.R. § 103.2(b)(9), USCIS may require any applicant, beneficiary, or other person submitting an immigration benefit request, or any class of such persons, to appear for biometric collection. Biometrics may be used "to conduct background and security checks and otherwise assess eligibility for a requested benefit."[18] Requiring biometrics from every EAD applicant would constitute a reasonable exercise of this authority and would replace inconsistent category-specific practices with a clear, uniform rule.

The requirement should also apply to renewal applicants. A prior biometric submission establishes only that USCIS collected information at an earlier point in time. It does not confirm that the person submitting the present application is the same person, nor does it provide USCIS with a current photograph for document production and identity confirmation.

[18] 8 C.F.R. § 103.16(a).

A renewal application is a new request for government authorization to work, and eligibility may depend on circumstances existing at the time of adjudication. Requiring a new biometric submission would help USCIS authenticate the renewal request, confirm the applicant's continuing identity, identify records created under different biographic information, and obtain an updated image for the new EAD.

A universal renewal requirement is especially appropriate because employment authorization may be renewed repeatedly, sometimes allowing an alien to work in the United States for many years. During that period, the applicant may become the subject of a criminal arrest, investigation, removal order, immigration-enforcement action, or other information bearing on eligibility or the favorable exercise of discretion. Although agencies may be able to rerun certain checks using previously collected fingerprints, a new biometric appearance serves the additional purpose of verifying the identity and physical presence of the person requesting the renewed document. DHS should not presume indefinitely that biometrics collected years earlier remain sufficient for every subsequent adjudication.

Any additional administrative burden is justified by the DHS's interest in protecting the integrity of the employment-authorization system. A biometric appointment ordinarily imposes a limited, one-time burden during each application cycle. That burden is modest in comparison with the benefits of preventing identity fraud, detecting duplicate applications, producing a more reliable document, and ensuring that employment authorization is granted only after appropriate vetting.

Accordingly, DHS should amend 8 C.F.R. §§ 103.2, 103.16, and 274a.13 to provide that every applicant seeking an initial renewed EAD must appear for biometric collection. The regulation should further ensure that USCIS may not approve the application until the required biometrics have been collected and the resulting identity, criminal history, national security, and immigration history checks have been completed. DHS should not permit routine reuse of previously submitted biometrics to substitute for a new collection in renewal cases. A uniform requirement would strengthen the reliability of EADs, deter fraud, and better protect the integrity of the U.S. immigration and employment verification systems.

V. DHS Should Automatically Terminate an EAD if the Alien Receives an Administratively Final Order of Removal or the Underlying Basis for the Employment Authorization is Denied, Expired, or Rescinded.

DHS should amend 8 C.F.R. § 274a.14 to provide that discretionary employment authorization automatically terminates when an alien becomes subject to an administratively final order of removal or when the status, application, grant of relief, parole, deferred action, or other circumstance supporting the employment authorization is finally denied, expires, or is rescinded. Except where Congress has expressly provided otherwise or the alien possesses an independent and continuing basis for employment authorization, an alien should not remain authorized to work after the legal or discretionary basis for that authorization has ceased.

A. DHS should automatically terminate an EAD if the alien receives a final order of removal.

DHS should automatically terminate an alien's EAD if they receive an administratively final order of removal. An EAD does not confer immigration status, lawful presence, or an independent right to remain or work in the United States. Rather, for aliens covered by 8 C.F.R. § 274a.12(c), employment authorization is a discretionary benefit derived from an identified status or circumstance.

A final removal order reflects the completion of administrative proceedings and a determination that the alien is removable and has not obtained relief preventing removal.[19] Continuing to authorize employment after that determination undermines the finality of removal proceedings, weakens incentives to comply with removal orders, and enables aliens ordered removed to retain a significant immigration benefit while remaining in the United States. It also sends conflicting governmental signals when ICE is responsible for effectuating the alien's removal while DHS continues to authorize the alien's participation in the domestic labor market.

Automatic termination will also conserve agency resources. Under the existing regulation, DHS may have to identify cases in which the underlying condition no longer exists, issue a notice of intent to revoke, provide 15 days for countervailing evidence, and enter a separate revocation decision.[20] Those procedures serve little purpose when termination rests on an objectively verifiable agency or administrative action, such as the entry of a final removal order.

Finally, DHS should also require prompt updates to SAVE, E-Verify, and other relevant agency systems so that employers and government agencies do not continue relying on an EAD whose underlying authorization has terminated. This reform would align the validity of an EAD with the legal basis for its issuance, promote the finality of immigration adjudications, preserve DHS resources, and strengthen the integrity of the employment-authorization system.

B. DHS should automatically terminate an EAD if the underlying basis for the employment authorization is denied, expired, or rescinded.

DHS should amend 8 C.F.R. § 274a.14 to provide that employment authorization granted under any discretionary category in 8 C.F.R. § 274a.12(c) automatically terminates when the underlying application, petition, status, parole, deferred action, protection, or other circumstance supporting that authorization is denied, expires, is withdrawn, or is rescinded. A discretionary

[19] *See* INA § 101(a)(47)(A)-(B).
[20] *See* 8 C.F.R. § 274a.14(b)(2).

EAD should not remain valid after the legal or factual predicate upon which DHS issued it has ceased to exist. Continuing to authorize employment under those circumstances transforms a temporary, derivative benefit into a freestanding benefit that Congress never independently determined the alien should receive.

Congress defined an "unauthorized alien" to include any alien who is neither a lawful permanent resident nor "authorized to be so employed by [the INA] or by the [Secretary of Homeland Security]."[21] This provision does not require DHS to allow an authorization to continue after the circumstances justifying it have ended. Indeed, when employment authorization under § 274a.12(c) depends upon a pending application, a grant of parole or deferred action, or another temporary circumstance, the authorization necessarily should remain tethered to that predicate. Once the underlying basis is denied, expires, or is rescinded, the alien no longer satisfies the conditions upon which DHS exercised its discretion.

The current regulations do not consistently enforce that principle. Section 274a.14(a) automatically terminates employment authorization under § 274a.12(c) when the EAD reaches its printed expiration date, removal proceedings are instituted, or the alien is granted voluntary departure. But when a condition upon which the EAD was granted "has not been met or no longer exists," § 274a.14(b) generally provides only that a district director *may* revoke the authorization after issuing a notice of intent to revoke and allowing 15 days for a response.[22] As a result, an alien may retain facially valid employment authorization for months or years after DHS or the Department of Justice has conclusively determined that the alien no longer possesses the underlying basis for it. Automatic termination would instead make the loss of employment authorization a direct regulatory consequence of the underlying decision.

A uniform automatic-termination rule would also strengthen program integrity and eliminate incentives to prolong proceedings merely to preserve work authorization. DHS recently recognized this concern in the asylum context, explaining that allowing an alien to retain a facially valid asylum-applicant EAD after the asylum application has been denied creates an additional incentive for frivolous or meritless filings. DHS accordingly proposed automatic termination of a (c)(8) EAD following specified asylum denials or dismissals.[23] The same reasoning applies across discretionary EAD categories: an alien should not continue receiving an ancillary employment benefit after becoming ineligible for the very status, protection, or exercise of discretion from which that benefit arose.

DHS should therefore amend § 274a.14(a) to provide that employment authorization granted under § 274a.12(c) automatically terminates upon the effective date of a decision denying,

[21] INA § 274A(h)(3).
[22] 8 C.F.R. § 274a.14(a)-(b).
[23] *See* 91 Fed. Reg. 8616 (Feb. 23, 2026).

withdrawing, terminating, or rescinding the underlying basis for the authorization, or upon the expiration of that underlying basis. The rule should apply notwithstanding a later expiration date printed on the EAD. No separate notice of intent to revoke should be required because the notice and opportunity to respond applicable to the underlying adjudication supply the relevant process; termination of the associated EAD would be a ministerial consequence of that adjudication rather than a second discretionary decision.

Finally, DHS should ensure that automatic termination is reflected promptly in its employment-verification systems. USCIS should update the alien's record when the underlying decision takes effect, make the termination discoverable through E-Verify or other authorized verification procedures, notify the alien that the EAD is no longer valid, and require surrender or destruction of the physical card. These measures are necessary because an employer ordinarily cannot determine from the face of an unexpired EAD that the underlying authorization has terminated.

VI. DHS Should Only Allow an Alien Released from Custody on OSUP to Receive an EAD in Extraordinary Circumstances.

CIS agrees with DHS's proposal to limit EAD eligibility to aliens who are released from ICE custody under OSUP, which allow aliens to remain in the United States while awaiting deportation or removal when they cannot be removed due to the refusal of all countries designated by the alien or under INA § 241 to receive the alien, or because the removal of the alien is otherwise impracticable or contrary to the public interest. Under this proposal, DHS will continue to allow aliens who are subject to a final order of removal and released on OSUP to apply for discretionary employment authorization, if: (1) the alien is complying with the conditions of release described in their order of supervision, (2) DHS has determined that the alien's removal is impracticable, either at the time of the alien's release from custody or at the time the alien checks in with ICE as scheduled and required by the terms of the alien's order of supervision, because all countries from which DHS has requested travel documents at that time have failed to issue such documents, (3) the alien establishes economic necessity, and (4) DHS determines that the alien otherwise warrants a favorable exercise of discretion for a grant of employment authorization.[24]

When adjudicating employment authorization under 8 C.F.R. § 274a.12(c)(18), USCIS "historically granted the benefit to any alien with a final order of removal released on an order of supervision without conducting an individualized assessment of whether the alien cannot be removed due to the refusal of all countries designated by the alien or under section 241 of the Act to receive the alien or because removal is impracticable or contrary to the public interest."[25]

[24] 91 Fed. Reg. 34352, 34379 (Jun. 5, 2026).
[25] *Id.* at 34354.

This regulation, however, does not clearly place the burden on the alien to establish that they warrant a favorable exercise of discretion. Moreover, aliens with final orders of removal do not have a right to apply for or obtain employment authorization.[26]

CIS agrees with DHS that granting EADs to aliens in this category generally undermines Congress' removal scheme, which is essential to the integrity of the immigration system as a whole. CIS believes that this change will encourage aliens to obtain travel documents and depart the United States in more timely manners. Moreover, CIS believes, however, that DHS can strengthen this rulemaking to further promote the integrity of the immigration system by only allowing aliens released under OSUP to obtain an EAD if they can demonstrate that they do not have any relatives or sponsors that are able to provide financial support.

CIS also supports DHS's proposal that aliens applying for renewal of employment authorization under this category to be employed by or seeking employment from an U.S. employer that participates, in good standing, with E-Verify. Because employment authorization for aliens subject to final orders of removal is discretionary, DHS may reasonably condition its renewal on safeguards that promote compliance with federal immigration law and protect the integrity of the labor market. Requiring participation in E-Verify would help ensure that employers verify the continued work authorization of OSUP recipients, reduce opportunities for document fraud and unauthorized employment, and provide DHS with greater visibility into the employment of aliens whom the government has ordered removed but cannot immediately repatriate.[27]

VII. DHS Should Amend 8 C.F.R. § 274a.12(c)(14) and (18) to Limit the Validity Period for an EAD Issued to a Deferred Action Recipient or an Alien Released on OSUP to One Year.

CIS supports DHS's proposal to limit the validity period for EADs issued under 8 C.F.R. § 274a.12(c)(14) (for deferred action recipients) or under 8 C.F.R. § 274a.12(c)(18) (for aliens released from ICE custody under OSUP) to one year. Under this scheme, aliens in these categories will be eligible to apply for a renewal. Neither deferred action nor release under an OSUP confers a lawful immigration status, and neither provides a permanent statutory basis for employment in the United States.[28] Employment authorization for these aliens is instead a discretionary benefit that DHS may grant, deny, or condition based on the circumstances presented.

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[26] *See* INA §§ 241(a)(7), (h).
[27] *See* Center for Immigration Studies, *E-Verify Continues to be Employers' Best Tool to Verify Employees' Work Authorization* (Jan. 3, 2023); U.S. Dep't of Homeland Sec., *E-Verify: Fact vs. Fiction* (Mar. 10, 2026).
[28] *See* INA § 241(a)(3); *Reno* v. *Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483-84 (1999).

A one year validity period would ensure that DHS regularly reviews whether continued employment authorization remains warranted. CIS agrees that limiting the validity period for EADs issued under these categories will ensure ongoing management of aliens who are subject to removal from the United States, ensure that aliens with deferred action or released on OSUP are complying with the terms and conditions of OSUP or their deferment, and have not reoffended, absconded, or are otherwise become subject to a termination of their position.

Moreover, a one year validity period in conjunction with this rule's biometrics requirement will allow DHS to obtain the most up-to-date and accurate background information on applicants in these categories. During a multi-year validity period, a deferred action recipient may commit a crime, present a threat to public safety or national security, violate the conditions of deferred action, or otherwise cease to merit a favorable exercise of discretion. Likewise, an alien released under an OSUP may violate the conditions of release, fail to comply with reporting requirements, refuse to cooperate in obtaining travel documents, or become removable to a country that has begun accepting repatriations. Requiring annual renewal would give DHS a recurring opportunity to identify changed circumstances, conduct updated background and security checks, confirm compliance with all applicable conditions, and determine whether continued employment authorization remains consistent with the agency's enforcement priorities.

Limiting these EADs to one year is also consistent with the temporary nature of the underlying bases for employment authorization. Deferred action merely reflects DHS's revocable decision to defer removal proceedings for a limited period; it does not eliminate the alien's removability or create an entitlement to remain or work in the United States.[29] Similarly, release under an OSUP does not cancel a final order of removal. It permits an alien to remain outside immigration custody temporarily while DHS continues attempting to execute that order.[30] Issuing more lengthy EADs to aliens in these categories risks creating the appearance of a durable immigration benefit.

This reform will align with the limitations imposed by H.R. 1 for parolees and aliens granted Temporary Protected Status.[31] These categories are comparable because their authorization to remain and work in the United States is temporary and typically does not reflect possession of an independently acquired, permanent immigration status.[32]

Although annual renewals may impose some additional administrative costs, those costs are justified by the government's strong interest in preventing discretionary employment authorization from continuing without meaningful oversight and can be mitigated through

[29] *See* U.S. Citizenship & Immigr. Servs., *Policy Manual, Deferred Action Determinations* (Jul. 13, 2026).
[30] *See* INA § 241(a)(3); 85 Fed. Reg. 74196 (Nov. 19, 2020).
[31] Public Law 119-21 §§ 100003(b)(1), (c)(1), 139 Stat. 72 (July 4, 2025).
[32] *See* INA § 212(d)(5)(A), 244a.

USCIS's fee setting authority. Administrative convenience should not outweigh the need to ensure that aliens who lack lawful immigration status remain eligible for discretionary employment authorization.

VIII. Conclusion

CIS generally agrees with DHS that the proposed rule will minimize the risk of disadvantaging U.S. workers, reduce incentives to migrate to or remain in the United States unlawfully, and promote the integrity of the U.S. immigration system. The proposed reforms appropriately recognize that employment authorization is a valuable benefit that should be granted only when consistent with the immigration laws, DHS's enforcement priorities, and the interests of American workers.

To strengthen the proposed rule, we respectfully urge DHS to:

1. Repeal 8 C.F.R. § 274a.12(c)(11) and eliminate eligibility for employment authorization based solely on a grant of parole;
2. Amend 8 C.F.R. § 274a.12(c) to require adjudicating officers to assign significant negative weight to criminal conduct when exercising discretion to adjudicate an EAD application;
3. Amend 8 C.F.R. § 274a.13 to require every EAD applicant, including each renewal applicant, to submit biometrics;
4. Amend 8 C.F.R. § 274a.14 to provide for the automatic termination of an EAD when the alien becomes subject to a final order of removal or when the underlying basis for employment authorization is denied, rescinded, or expires;
5. Amend 8 C.F.R. § 274a.12(c)(18) to restrict EAD eligibility for aliens released from ICE custody under orders of supervision unless: (a) DHS determines that removal is impracticable because every country from which DHS has requested travel documents has failed to issue them; (b) the alien demonstrates economic necessity and establishes that no relative or sponsor is able to provide financial support; and (c) for a renewal application, the alien is employed by or seeking employment with a U.S. employer that participates in E-Verify and remains in good standing; and
6. Amend 8 C.F.R. § 274a.12(c)(14) and (18) to limit the validity of EADs issued to deferred-action recipients and aliens released under orders of supervision to no more than one year.

Collectively, these reforms would ensure that DHS exercises its employment-authorization authority cautiously, consistently, and in accordance with the temporary and discretionary nature of the underlying categories. They would also enable DHS to verify applicants' identities and continuing eligibility more frequently, prevent employment authorization from outlasting its legal or discretionary basis, reduce incentives for unlawful migration and continued unlawful presence, and better protect American workers from unfair or unnecessary labor-market competition. We therefore urge DHS to finalize the proposed rule with the additional amendments described above.