



## **Explainer: Proposed Restrictions on Employment Authorization for Certain Noncitizens**

### **Introduction**

On June 5<sup>th</sup>, 2026, the Department of Homeland Security (DHS) published a notice of proposed rulemaking titled "[Clarification of Discretionary Employment Authorization for Certain Aliens](#)." The proposed rule would limit eligibility for employment authorization for three groups of noncitizens: (1) individuals paroled into the United States for urgent humanitarian reasons, (2) recipients of deferred action, and (3) individuals with final orders of removal released under Orders of Supervision (OSUP). Under the proposal, these individuals would be eligible for employment authorization only if DHS determines they warrant a favorable exercise of discretion. Public comments may be submitted in response to the proposed rule until August 4.

To qualify for an [Employment Authorization Document](#) (EAD), applicants would be required to demonstrate economic necessity, submit biometrics for background screening, have no disqualifying criminal history, and show that they are not affiliated with a gang or criminal organization. The proposal would also require applicants to demonstrate that they are employed (or will become employed) by an employer enrolled in [E-Verify](#). Notably, the proposed rule would not apply to Deferred Action for Childhood Arrivals ([DACA](#)) recipients, [T visa applicants](#), or individuals granted deferral of removal under the [Convention Against Torture](#) (CAT).

This explainer examines the current framework governing discretionary employment authorization, describes the categories of noncitizens targeted by the proposed rule, analyzes the proposal's major provisions, and explores its potential implications for affected noncitizens, American employers, and the broader workforce. Because employment authorization allows many noncitizens to work lawfully in the United States, the proposed changes could have significant implications for both immigrant workers and employers across a range of industries.

### **Discretionary Employment Authorization**

EADs are identification cards (USCIS [Form I-766](#)) that serve as evidence that a noncitizen is authorized to work in the United States for a specific period. For many categories of noncitizens – such as asylees, refugees, and U status recipients – the

authorization to work is incident to their immigration status. However, other categories of nonimmigrants are subject to discretionary employment authorization.

Discretionary employment authorization refers to work authorization that DHS may grant to certain noncitizens as a matter of administrative discretion rather than as an automatic benefit tied to an immigration status. Among those who must actively apply to receive discretionary employment authorization are individuals paroled into the United States for urgent humanitarian reasons or significant public benefit, recipients of deferred action, and individuals with final orders of removal released under order of supervision — the three groups targeted by the proposed rule. Although these individuals may be permitted to remain in the United States for humanitarian, legal, or practical reasons, they generally do not possess an immigration status that automatically authorizes employment.

Under current regulations, these individuals may apply for employment authorization by filing Form I-765, Application for Employment Authorization, with USCIS and demonstrating eligibility under the applicable regulatory provisions. If approved, USCIS issues Form I-766 – an EAD. Employers use EADs as part of the federal Form I-9 employment verification process to confirm that an individual is legally authorized to accept employment.

Overall, EADs and discretionary employment authorization play an important role in allowing many noncitizens to participate in the United States workforce and support themselves and their families. As a result, changes to employment authorization eligibility can have significant implications not only for affected noncitizens but also for employers, businesses, and American communities at large.

### **Affected Categories: Humanitarian Parolees, Recipients of Deferred Action, and Individuals with Final Orders of Removal Released Under Orders of Supervision**

The proposed rule specifically targets three major categories of discretionary employment authorization recipients:

**Humanitarian Parolees:** Humanitarian parolees are noncitizens who have been paroled into the United States for urgent humanitarian reasons or significant public benefit. Parole is a temporary authority that “allows individuals who may not otherwise be allowed into the United States to enter the United States legally and stay temporarily, even if they are inadmissible or ineligible for other reasons.” In recent years, this category has included large numbers of nationals from Cuba, Haiti, Nicaragua, and Venezuela who entered through parole programs established by DHS.

Because parole does not itself provide permanent immigration status, many parolees rely on discretionary employment authorization to lawfully work and support themselves while they remain in the United States.

**Deferred Action Recipients:** [Deferred action](#) recipients are noncitizens who have been granted deferred action by USCIS or another component of DHS. Deferred action is a form of prosecutorial discretion under which the government temporarily postpones efforts to remove an individual from the United States. Although deferred action does not confer lawful immigration status, recipients are often permitted to remain in the country for a designated period and may apply for employment authorization. Notably, DACA recipients receive employment authorization under separate [formal rulemaking](#) and are therefore excluded from the proposed rule.

**Individuals With Final Orders of Removal Released Under Orders of Supervision:** Individuals with final orders of removal released under orders of supervision are noncitizens who have received final orders of removal but [cannot be physically removed](#) from the United States for legal or practical reasons. In many cases, a home country may refuse to issue travel documents or accept the individual's return. As a result, DHS may release these individuals from detention under an order of supervision that requires them to comply with specified reporting and monitoring requirements. Many individuals in this category have been eligible to apply for discretionary employment authorization while they remain in the United States.

## **Major Provisions of the Proposed Rule**

**Restrictions on employment authorization for three categories of noncitizens:** As explained above, the central feature of the proposed rule is that humanitarian parolees, recipients of deferred action, and individuals with final orders of removal released under orders of supervision would no longer receive employment authorization solely because they are eligible for discretionary EADs.

**Applicants would be required to demonstrate economic necessity to obtain EAD:** Applicants would be required to demonstrate that they warrant a favorable exercise of discretion by DHS before employment authorization may be granted or renewed. To obtain employment authorization, applicants would generally be required to provide [“extensive financial data”](#) to prove economic necessity and establish that they do not present public-safety concerns.

**A criminal record would disqualify EAD applicants:** [The proposed rule](#) specifies that individuals who admit to committing, have been arrested for, or have been convicted of certain criminal offenses do not warrant a favorable exercise of

discretion. Similarly, applicants who are determined to be affiliated with a gang or criminal organization would be ineligible for employment authorization. [Experts](#) have noted the expansiveness of how “criminality” is defined in this new regulation, calling it a “near-zero tolerance” policy regarding criminal history – applying to certain people who have been neither convicted nor even charged with a crime.

**Expansion of biometrics requirements for EAD applicants:** The proposal would also require affected applicants to submit [biometrics](#), including fingerprints and photographs, as part of the employment authorization process. Notably, re-applicants [must provide fresh biometrics](#) for every single renewal application. DHS [states](#) that this requirement would allow the agency to conduct additional background and security screening before exercising its discretion to grant employment authorization. While certain applicants are [already subject to biometric](#) collection in other immigration processes, the proposed rule would expand the use of biometrics.

**Applicants must work for employers enrolled in E-Verify:** The proposed rule would require applicants to demonstrate that they are employed, or will be employed, by an employer enrolled in [E-Verify](#), “an online system in which employers can check their employees’ work eligibility.” Under this provision, applicants would be required to provide evidence of qualifying employment before receiving employment authorization. DHS [argues](#) that this requirement would help ensure that discretionary employment authorization is granted only to individuals participating in lawful employment. Under federal law, E-Verify is voluntary, and the vast majority of the nation’s employers do not participate in the program. Because it is only mandatory for federal employers, federal contractors, and employers in certain states that have passed state laws requiring its use, the proposed rule’s E-Verify requirement may be in tension with federal law and is likely to pose significant compliance and/or workforce costs on many employers.

**Exceptions for the affected categories of noncitizens:** The proposed rule creates limited exceptions to the restrictions mentioned above. DHS would retain discretion to grant employment authorization when doing so serves an important public interest, such as [facilitating cooperation with law enforcement activities](#).

### **Impact on Affected Noncitizens, American Employers, and Businesses**

The proposed rule would significantly alter the current framework governing discretionary employment authorization by imposing new eligibility requirements and expanding background-screening procedures. Rather than receiving EADs as a default, applicants who are already permitted to remain in the United States for humanitarian,

legal, or practical reasons would need to meet a significant burden and present evidence to demonstrate economic necessity and pass new and expansive screening.

Notably, the proposed rule could have significant implications for both noncitizens who rely on discretionary employment authorization and the employers and businesses that depend on their labor. Noncitizens who fail to meet the requirements could be denied employment authorization, limiting their ability to lawfully work and support themselves and their families while they remain in the United States. Even applicants who ultimately qualify may experience longer processing times due to additional screening and biometrics requirements.

The proposal could also [affect American employers and businesses](#) that rely on workers who obtain employment authorization through DHS's discretionary authority. In 2024 alone, USCIS received [978,308 EAD applications](#) from the three categories targeted by the proposed rule. To the extent that the proposal reduces the number of individuals eligible for employment authorization or delays the issuance and renewal of EADs, employers may face staffing shortages and increased hiring and training costs. DHS itself has estimated that the proposed bill will produce [\\$27.9 billion in direct costs](#) “over the next decade due to lost productivity and employment turnover.” Therefore, this becomes an issue not only for the directly affected noncitizens but also for the American economy as a whole.

As noted above, the proposed rule's E-Verify requirement will affect both workers and employers. Under the proposed rule, affected applicants would generally be required to demonstrate that they are employed, or will be employed, by an employer enrolled in E-Verify. Because E-Verify is not mandatory for most employers — only about [14%](#) of United States employers are currently enrolled in the program — these workers will face a narrower range of employment opportunities, and employers that do not participate in the program will either be prevented from hiring these workers or compelled to enroll in E-Verify and face new compliance and administrative costs.

## **Conclusion**

The proposed rule would significantly alter the framework governing discretionary employment authorization for humanitarian parolees, recipients of deferred action, and individuals with final orders of removal released under orders of supervision. By requiring applicants to demonstrate economic necessity, submit biometrics, satisfy heightened discretionary standards, and obtain employment with E-Verify participating employers, the proposal would impose new requirements on some of the largest categories of noncitizens who currently rely on DHS's discretionary authority to obtain employment authorization.

DHS argues that these changes would strengthen oversight of discretionary employment authorization programs and ensure that work authorization is granted only to individuals who satisfy more rigorous eligibility standards. Critics, however, contend that the proposal would unnecessarily reduce workforce participation, increase administrative burdens, and create challenges for both affected noncitizens and the employers who depend on their labor.

The proposed rule highlights the important role employment authorization plays in the United States immigration system and the significant economic and humanitarian consequences that can result from restricting access to that process.