October 30, 2026

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

Re: Comment on U.S. Citizenship and Immigration Services, 8 CFR Parts 204 and 214, CIS No. 2858-26; DHS Docket No. USCIS-2026-0364, RIN 1615-AD22 to remove regulations at 8 CFR 214.1(l)(2) that provided aliens in certain nonimmigrant classifications (and their dependents) with an up to 60-day grace period upon cessation of employment prior to the expiration of the alien's authorized period of stay.

Submitted online via www.regulations.gov.

On behalf of the National Foundation for American Policy (NFAP), a nonpartisan policy research organization, I submit this comment to provide information on the proposed rule to remove regulations at 8 CFR 214.1(l)(2) that provided aliens in certain nonimmigrant classifications (and their dependents) with an up to 60-day grace period upon cessation of employment prior to the expiration of the alien's authorized period of stay.[1]

DHS proposes ending the up to 60-day grace period that allows H-1B visa holders to find other employment if they lose a job. The proposed immigration rule, which also applies to the E, L-1, O-1 and TN visa categories, reflects an administration effort to restrict immigration and further reduce the labor supply, despite warnings that these policies will likely have negative economic consequences. If enacted, the measure would make working in H-1B status more precarious and tie H-1B professionals more closely to their current employers. It may also discourage highly skilled individuals from choosing to work in the United States.

DHS offers weak arguments to justify eliminating the grace period and will need to overcome the argument that visa holders and employers have "reliance interests" DHS has not accounted for in the rule.

[1] This comment is adapted from Stuart Anderson, "DHS Proposes Immigration Rule To End 60-Day H-1B Grace Period," *Forbes*, September 11, 2026.

H-1B temporary visas are often the only way for high-skilled foreign nationals to work in the United States long term. Employers must pay the higher of the actual or prevailing wage paid to U.S. professionals with similar experience and qualifications. Companies recruiting at U.S. universities find that international students account for approximately 75% to 80% of full-time graduate students in AI-related fields, such as computer and information sciences.

Eliminating the 60-day grace period conforms to a pattern. Trump officials have proposed or implemented several restrictions on high-skilled foreign nationals. A recent proposed rule may price many H-1B visa holders and employment-based immigrants out of the U.S. labor market by changing prevailing wage levels. Another upcoming rule may introduce additional H-1B restrictions. On August 25, the Trump administration proposed a $103,265 tax on all petitions subject to the H-1B annual limit in an immigration rule. The rule was similar to a presidential proclamation in Sept. 2025 that imposed a $100,000 fee on the entry of new H-1B visa holders. In June, a federal judge struck down that fee, calling it an intrusion on Congress's taxing authority.

Ending the 60-day grace period could profoundly impact many lives. Maya, a former international student from India, graduated from the University of Southern California with a master's degree in a STEM program in digital media. After receiving H-1B status and working several months for a fintech company, Maya was laid off after the company redistributed her design team's duties. "The 60-day grace period was essential for me after being impacted by a layoff," she said in an interview. "As an H-1B visa holder, my employment options are already significantly restricted by my visa status. I can't fall back on freelance or contract work to support myself while I search for my next job."[2]

"Without the grace period, a layoff can change the course of my entire life overnight," said Maya. "I could lose my job and almost immediately have to leave the country, with little time to find another employer or make arrangements to wrap things up. After seven years of building a life, a career and paying taxes like any other worker, I think a 60-day grace period is a reasonable safeguard after an unexpected job loss."[3]

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[2] Ibid.
[3] Ibid.

New Immigration Rule Ends Grace Period

The proposed rule removing from federal regulations an up to 60-day grace period after employment ends for H-1B visa holders and other high-skilled foreign nationals would overturn a 2016 final rule that established the grace period along with other measures to implement legislation, including the American Competitiveness in the 21st Century Act.

"DHS originally extended this grace period to aliens in the listed classifications, and their dependents, to encourage aliens who ceased employment prior to the end of the petition validity period to remain in the United States to pursue other immigration options to maintain a lawful immigration status and, depending on the classification sought, continue or regain employment authorization; and to help U.S. employers to more easily facilitate changes in employment for existing and newly recruited nonimmigrant workers," according to the proposed rule's executive summary. "However, the relevant rulemaking did not sufficiently consider the negative impacts of the grace period provision."

DHS does not explain what these "negative impacts" have been. Instead, it states that removing the 60-day grace period would "better align the regulations with the statutory basis for nonimmigrant status." It presents no evidence that the current rule allowing a 60-day grace period is unlawful. DHS provides a vague reason for the proposed rule: "to reduce administrative burden associated with administering the grace period."

A close reading of the Federal Register document finds DHS concedes that the rule would harm H-1B and other visa holders and increase the workload of certain federal authorities. "DHS recognizes that as a consequence of this change, a subset of these aliens may incur lost income if they require additional days to conduct their job search and return to the United States because they would need to leave the country instead of being able to stay and begin new employment without departing.

"DHS estimates that under this proposed rule, some aliens may be issued Notices to Appear, thereby incurring costs of attending immigration hearings with the Department of Justice Executive Office for Immigration Review (EOIR) as part of removal proceedings. . . DHS acknowledges that the proposed rulemaking would marginally increase the volume of USCIS referrals to EOIR annually and lead to a minor increase in workload demands on both DOJ and U.S. Immigration and Customs Enforcement (ICE)."

Analysts and attorneys consider DHS's assertion that ending the 60-day grace period would ease the administrative burden misleading or mistaken. Under "reducing administrative burden," DHS states, "The process of assessing whether a grace period is warranted; and then of adjudicating the request and determining start and end dates of a grace period may be time consuming and complex for the agency and confusing or unpredictable for petitioners, the alien, and the alien's dependents." This does not appear to be an accurate statement.

First, readers of the regulatory notice may question the sincerity of DHS expressing concern that "determining start and end dates of a grace period may be . . . confusing or unpredictable for petitioners, the alien, and the alien's dependents" at the same time the department is making the lives of "petitioners, the alien and the alien's dependents" more precarious by changing federal regulations.

Second, by objective standards, attorneys say it is not true, as DHS asserts, that "determining start and end dates of a grace period may be time consuming and complex for the agency." The USCIS website states a straightforward way of determining when a grace period begins: "*Q: When does the 60-day grace period start?* A: The maximum 60-day grace period starts the day after termination of employment, which is typically determined based on the last day for which a salary or wage is paid." By reasonable standards, adding 60 days to "the last day for which a salary or wage is paid" is not "time consuming and complex for the agency."[4]

Third, ending the 60-day grace period will almost certainly increase the number of applications USCIS must adjudicate, thereby increasing, not reducing, the agency's administrative burden. "The DHS argument in the proposed rule on reducing administrative burden is counterintuitive," said Jonathan Grode of Green & Spiegel in an interview. "Ending the 60-day grace period will increase the number of applications because when a foreign national is given a notice of separation, we and other law firms file Form I-539 to extend the stay and change the individual's status to a visitor status."[5]

[4] https://www.uscis.gov/archive/options-for-nonimmigrant-workers-following-termination-of-employment-0.
[5] Stuart Anderson, "DHS Proposes Immigration Rule To End 60-Day H-1B Grace Period," *Forbes*, September 11, 2026.

Grode said that is what employers did before the 2016 rule. Dan Berger, his colleague at Green & Spiegel, confirms that employees used to change to B-2 visitor status and still try to do so today, unless they don't have enough time.[6]

Berger is concerned that the Trump administration will make shifting to B-2 visitor status more difficult. "We have even seen a handful of H-1B workers served with Notices to Appear in immigration court after an H-1B is withdrawn. Even where something else is filed like a B-2," he said in an interview. "If the 60-day grace period ends, H-1B visa holders need to leave or file for a change to visitor status before the date of separation."[7]

If DHS forecloses the path to extending one's stay via B-2 visitor status, the proposed rule will not reduce the "administrative burden" of the federal government but only shift processing elsewhere, according to attorneys. "The proposal would likely shift many cases from domestic USCIS adjudications to consular processing abroad," said Jeff Robins, a senior counsel at BAL, in an interview. "That does not eliminate the need for adjudications, but simply shifts responsibility to the State Department, which already faces significant demand for visa appointments in many locations. The rule may relocate bottlenecks elsewhere in the system."[8]

Robins also believes the rule will create additional delay and uncertainty for employers seeking to retain workers whom the government has already determined are qualified for positions that have already been vetted.

The justification for the proposed rule may be lacking in other ways. DHS states, "[T]he proposed rule would enable DHS to conduct the administration and adjudication of immigration benefit requests for E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1, and TN classifications with increased fidelity and is conducive to program integrity." However, DHS fails to explain why and expects employers, visa holders and the public to accept its assertions about "increased fidelity and is conducive to program integrity."

Attorneys note that ending the grace period appears designed to fit a DHS policy preference to reduce the ability of H-1B visa holders and other high-skilled foreign nationals to work in the United States.

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[6] Ibid.
[7] Ibid.
[8] Ibid.

The Immigration Rule Reduces Labor Mobility

DHS failed in the NPRM to adequately justify reversing a longstanding policy adopted to promote labor mobility and employer flexibility.

"Challengers and courts are also likely to scrutinize DHS's claim that the rule meaningfully reduces administrative burdens," said Jeff Robins of BAL. "USCIS already evaluates discretionary questions involving maintenance of status and would appear to retain authority (under 8 C.F.R. § 214.1(c)(4)) to excuse certain untimely filings based on extraordinary circumstances. Adjudicators will still need to assess status violations, timeliness issues, and requests for discretionary relief. Eliminating the grace period does not eliminate discretionary adjudication; it simply shifts where and how that discretion is exercised."[9]

In discussing a separate rule, one to eliminate work authorization for the spouses of H-1B visa holders, Kevin Miner of Fragomen said in an interview, "The Supreme Court's DACA decision makes clear that an agency cannot simply erase a longstanding policy without a reasoned explanation and meaningful consideration of the legitimate reliance interests it has created. DHS would need to explain why reversing a decade-old policy despite the substantial reliance of families and employers is not arbitrary and capricious."[10]

That same reasoning could apply to the proposed rule ending the 60-day grace period, although DHS attempts to address it in its section on "Reliance Interests and Potential Impact of this Rule."

"DHS is cognizant that it is changing a longstanding policy that may impact aliens, employers, family members and potentially communities as a whole," according to DHS. It goes on to list some of the adverse impacts of the rule.

"DHS has considered these potential reliance interests and impacts and believes the negative impacts of the up to 60-day discretionary grace period on the legal immigration system, discussed in this preamble, outweigh any potential benefits to employers, aliens, and the community at large of retaining the grace period."

The "negative impacts" on the legal immigration system DHS cites in the rule notice are not supported by evidence.

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[9] Ibid.
[10] Ibid.

A consensus across the political spectrum has emerged that increased labor mobility better protects U.S. and foreign-born workers while also improving labor market efficiency. "Portability—the ability of a foreign worker to transition between employers without forfeiting legal status—is not a concept foreign to American immigration law. But it has never been systematically built into the employment-based system," notes the report *Mobility Matters* by the Migration and Human Rights Program of Cornell Law School.[11]

DHS asserts that by eliminating the 60-day grace period and reducing labor mobility, it is bringing federal regulations closer to Congress's intent. However, the Cornell Law School report notes that in the American Competitiveness in the 21st Century Act, Congress passed a provision that allows H-1B visa holders to begin working for a new employer without waiting for immigration services to approve the new application. Ending the 60-day grace period violates at least the spirit of that provision by forcing any H-1B visa holder who loses employment to leave the country almost immediately unless they receive a change-of-status approval from USCIS.

Eliminating the grace period increases the leverage of employers over foreign-born workers by narrowing their alternatives, according to BAL's Jeff Robins. "Most employers act appropriately, but immigration policy should account for situations where workplace conditions deteriorate, compensation disputes arise, layoffs occur or workers simply receive a better opportunity elsewhere," said Robins. "By requiring immediate departure following a job loss, the proposal could leave some workers with little practical choice but to remain in positions they would otherwise leave, which cuts against longstanding policies favoring worker mobility and labor market flexibility."

Sincerely,

[Signature Redacted]

Stuart Anderson
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[11] *Mobility Matters: Why Worker Portability Should Drive Reform of Employment-Based Visas*, Migration and Human Rights Program of Cornell Law School, July 2026.