**The following are draft/model comments for employers on USCIS’s proposed elimination of the requirement that USCIS grant an interim employment authorization document (EAD) if the agency does not adjudicate Form I-765 (the EAD application) within the 90-day regulatory time period, which is part of the Proposed Rule “**[**Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Immigrant Workers**](http://www.aila.org/infonet/dhs-proposed-rule-80-fr-81900-12-31-15)**.”**

**Employers may adapt these comments to suit their needs as appropriate.**

**NOTE: Comments must be submitted to USCIS on or before FEBRUARY 29, 2016.**

**Comments may be submitted to the Federal eRulemaking Portal (**[**www.regulations.gov**](http://www.regulations.gov)**) on the page for** [**DHS Docket No. USCIS-2015-0008**](http://www.regulations.gov/#!documentDetail;D=USCIS-2015-0008-0001)**.**

**Or they may also be submitted by email to:** [USCISFRComment@dhs.gov](mailto:USCISFRComment@dhs.gov). **Include in the subject line of the message: DHS Docket No. USCIS-2015-0008**

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[**COMPANY LETTERHEAD**]

[**Date**]

Laura Dawkins

Chief, Regulatory Coordination Division

Office of Policy and Strategy

U.S. Citizenship and Immigration Services

Department of Homeland Security

20 Massachusetts Avenue NW

Washington DC 20529

**Re: Notice of Proposed Rulemaking: “Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers.” Comment specifically opposing the proposal that repeals interim employment authorization requirements in the current 8 C.F.R. § 274a.13(d).**

**DHS Docket No. USCIS-2015-0008**

Dear Chief Dawkins:

We [**insert company name**] are [**insert description of company, including number of employees, industry, etc.**] We strongly oppose the part of the proposed rule that would eliminate the longstanding requirement that USCIS timely adjudicate applications for employment authorization within 90 days of applying or provide an interim employment authorization document (EAD) for up to 240 days to certain applicants for immigration benefits. We take issue with your failure to alert the public of this significant change in the title of this rulemaking. Instead, the agency placed the elimination of the 90 day/interim EAD rule at the end of a very lengthy and detailed proposal that in most other respects would make employment of qualified workers easier—but in this specific instance would eliminate a common sense remedy that is currently available to initial applicants for many types of immigration benefits. Many businesses and individuals may not realize that this proposed rule will adversely affect them. The pool of affected applicants includes not just highly skilled workers, who are the ostensible focus of the larger proposal, but also lesser-skilled but essential workers and many applicants for employment authorization under the family-based and other categories. We ask that you remove the elimination of the 90 day/interim EAD rule from this proposal and, if necessary, make this the subject of a separate proposed rule that would give the public proper notice and an opportunity to comment.

For more than a quarter-century, the agency and its predecessor INS have provided by regulation for interim employment authorization when the agency did not adjudicate an EAD application within the specified time period. USCIS’s delay in providing employment authorization to eligible noncitizens causes financial hardship to applicants from loss of employment opportunities and/or interruption or termination of employment, loss of driver’s licenses in many states and loss of benefits; to employers from the loss of authorized workers; and to applicants’ families, frequently including U.S. citizens, when they are left without the applicant’s income and benefits.

While we support the proposed rule’s automatic extension for applicants who apply to renew their previously granted EADs, the elimination of the 90 day/interim EAD rule leaves all initial applicants in limbo and at the mercy of USCIS whenever processing slows for any reason. While USCIS may adjudicate most EAD applications on time, employers, applicants and their families are harmed when adjudication delays occur. The security rationale fails to explain why a valid photo ID coupled with the USCIS-issued receipt notice is acceptable for renewal, but not for initial EAD applicants. USCIS has options for ensuring the integrity of the EAD process on the applicant’s and employer’s side of the equation, while not taking away important checks and balances found in the current regulation.

The proposed rule refers to operational realities and technological advances that favor the issuance of documents that are presumably less susceptible to tampering or counterfeiting. Yet, the proposed rule’s automatic 180-day extension for persons seeking to renew their EADs also demonstrates that USCIS is willing to continue to issue or accept a number of non-secure forms of employment authorization to some, but not all applicants. Through the information USCIS collects from the EAD application and the underlying application or petition and the security checks through biometrics, USCIS has safeguards in place to complement whatever form the interim EAD may take.

There also is no justification for removing the interim EAD from an applicant who was approved for an EAD in one category but applies in another category. While the new application would be for an initial EAD, the applicant was already vetted by USCIS when he applied for the prior EAD. Yet under the proposed rule, such an applicant would be subject to lay-off or termination from employment if his EAD application was not adjudicated timely without recourse to receive an interim EAD.

**[Insert other comments as appropriate.]**

The current rule strikes a balance that favors no one person or entity, does not discriminate between high skilled and low-skilled workers or employment and family-based immigrants, and does not interfere in any way with USCIS’s ability to adjudicate an application, request additional information from an applicant, or terminate an interim employment authorization in an appropriate case. The proposed elimination of the 90-day/interim EAD provisions should be rejected and any consideration of changes to interim EAD issuance should be undertaken in a separate, clearly identified notice with opportunity to comment.

Sincerely,

**[Name]**

**[Title]**