*Before the*
**Department of Homeland Security**
Washington, D.C.

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|---|---|
| *In re*<br><br>Eliminating the Discretionary 60-Day Grace Period<br>Notice of Proposed Rulemaking | Docket No. USCIS-2026-0364 |

**COMMENTS OF THE COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION (CCIA)**

In response to the *Eliminating the Discretionary 60-Day Grace Period Notice of Proposed Rulemaking* published in the Federal Register at 91 Fed. Reg. 57807 (Sep. 11, 2026), the Computer & Communications Industry Association (CCIA)[1] submits the following comments.

## Introduction

CCIA welcomes the opportunity to respond to the Department of Homeland Security's (DHS) *Eliminating the Discretionary 60-Day Grace Period Notice of Proposed Rulemaking* ("Proposed Rule").[2] CCIA's member companies collectively conduct business in a highly competitive global technology industry, many of whom rely on the H-1B, L-1, TN, E-1, E-2, E-3, H-1B1, and O-1 programs to secure the specialized global talent necessary to maintain U.S. leadership in emerging fields like artificial intelligence (AI). When CCIA member companies hire foreign skilled workers, it is because specific skills and talents are needed to advance

[1] CCIA is an international, not-for-profit trade association representing a broad cross section of communications and technology firms across the globe. CCIA members employ more than 1.6 million workers, invest more than $100 billion in research and development, and contribute trillions of dollars in productivity to the global economy. For more than 50 years, CCIA has championed open markets, open systems, and open networks, serving as a unified voice for the digital sector on public policy, legal, and regulatory issues. A complete list of CCIA members is available at http://www.ccianet.org/members.

[2] Eliminating the Discretionary 60-Day Grace Period, 91 Fed. Reg. 57807 (proposed Sep. 11, 2026) (Proposed Rule).

research, develop products, and remain competitive with foreign rivals. Since its promulgation in 2017, the 60-day grace period has functioned as an indispensable economic and operational safety valve. It allows foreign professionals and their family dependents to navigate routine job transitions, corporate restructurings, and unexpected terminations without suffering immediate loss of legal status or forced departure.

These comments focus on six fundamental problems with the Proposed Rule: (1) it creates an annual net economic harm of $121.5 million to $762.1 million which DHS does not account for as economically significant;[3] (2) it disregards nearly ten years of substantial reliance interests established across employers, workers, and dual-income households; (3) it undermines congressional intent to facilitate job mobility among highly skilled foreign workers; (4) it assumes that terminated workers forced abroad can secure new visas and return within two months despite significant consular processing delays;[4] (5) it creates severe onboarding delays and threatens U.S. innovation; and (6) it shifts administrative burdens onto the State Department, Immigration and Customs Enforcement (ICE), and the Department of Justice's Executive Office for Immigration Review (EOIR) through increased Notices to Appear (NTAs) and removal proceedings.[5]

## I. The Proposed Rule creates an annual net economic cost of $121.5 million to $762.1 million, with a central estimate of $262.8 million per year.[6]

In the Proposed Rule preamble and accompanying Regulatory Impact Analysis (RIA), DHS claims that the proposed rule would reduce administrative burdens while asserting that costs to beneficiaries and employers are unquantified or negligible.[7] This framework is

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[3] 91 Fed. Reg. at 57816.

[4] *See id.* at 57822 n.54 (explaining that "[a]s an upper bound estimate, DHS considered an alien who would have been able to work 60 additional days because the alien was not required to leave the country under the current regulation, but would require as much as two months to perform their job search and return to the United States").

[5] DHS itself acknowledges that "under this proposed rule, some aliens may be issued Notices to Appear (NTA), thereby incurring costs of attending immigration hearings with the Department of Justice Executive Office for Immigration Review (EOIR) as part of removal proceedings." *Id.* at. at 57817.

[6] Trevor Wagener, *Ending H-1B Grace Period Fails Cost-Benefit Test*, Computer & Communications Industry Association Research Center, (Oct. 2026), https://ccianet.org/articles/ending-h-1b-grace-period-fails-cost-benefit-test/.

[7] *See* 91 Fed. Reg. at 57817 tbl.1.

inadequate because it fails to quantify substantial private sector costs. CCIA research below illustrates the economic impact of repealing 8 C.F.R. § 214.1(l)(2) across three scenarios: a conservative baseline using DHS's FY2025 cohort count; a central empirical model; and a high-impact scenario incorporating projected FY2027 trend populations.[8]

**Table 1. Annual costs and benefits of eliminating the grace period, three scenarios**

| All monetary values in $ millions per year, except the cost-to-savings ratio and ten-year net cost | DHS scenario, FY2025 count | Central | High |
|---|---|---|---|
| **Costs** | | | |
| Lost pay of workers who must leave and return | $113.1 | $214.9 | $567.1 |
| Lost earnings of dependent spouses | $5.1 | $26.7 | $102.9 |
| Household airfare | $6.0 | $15.0 | $43.6 |
| Removal proceedings (government and worker) | $0.2 | $3.2 | $36.5 |
| Employer recruiting | $0.0 | $2.8 | $9.7 |
| Added consular workload | $0.3 | $1.0 | $2.4 |
| **Total costs** | **$124.5** | **$263.6** | **$762.2** |
| **Benefits** | | | |
| USCIS screening savings (illustrative) | $3.0 | $0.7 | $0.1 |
| **Net** | | | |
| **Amount by which costs exceed benefits** | **$121.5** | **$262.8** | **$762.1** |
| Ratio of Costs per $1 of savings | 42 to 1 | 354 to 1 | 5,118 to 1 |
| Ten-year net cost, present value at 7% ($ millions) | $853.6 | $1,846.1 | $5,352.6 |

Source: CCIA analysis of DHS, 91 FR 57807 (Sep. 11, 2026), and public data. DHS illustration, FY2025 count: DHS's own two-month illustration (n.54) at the $131,000 median wage, applied to DHS's FY2025 count of 5,178, with omitted costs at low values and generous USCIS savings. Central and High use mid-range and upper-range assumptions and include DHS's 1.46 benefits multiplier; High uses a FY2027 trend population. All columns are

[8] Trevor Wagener, *Ending H-1B Grace Period Fails Cost-Benefit Test*, CCIA Research Center (Oct. 2026), available at https://ccianet.org/articles/ending-h-1b-grace-period-fails-cost-benefit-test/.

conditional scenarios that assume exposure across DHS's full administrative cohort. Components may not sum to totals because of rounding.

As detailed in our table, the costs of eliminating the grace period exceed its benefits by substantial margins across every scenario. Moreover, under Executive Order 12866, regulatory actions with substantial economic effects warrant evaluation of their costs, benefits, and reasonable alternatives. DHS has not adequately explained how its decision to leave significant categories of private sector costs unquantified supports its assessment of the Proposed Rule's economic significance.[9]

DHS's own administrative record also raises serious questions about this designation. In the Proposed Rule, DHS provides a specific per-worker cost illustration:

> a worker who loses employment and requires two months to search for a job and re-enter from abroad loses about two months of pay, or roughly $21,833 at the cohort's $131,000 median annual wage ($131,000 × 2/12).[10]

Applying DHS's own formula to its reported population counts yields clear economic impacts. Additionally, DHS's 5-year average of 3,795 workers is less representative of recent trends. The Proposed Rule demonstrates that the affected cohort grew from 2,138 in FY2021 to 5,178 in FY2025, a 2.4-fold increase.[11] Applied to DHS's FY2025 count of 5,178 workers, DHS's own illustration yields $113.1 million a year. Under this illustrative scenario, lost wages alone would total $113.1 million annually, before accounting for dependent spousal earnings, relocation costs, or recruitment expenses. DHS should reconsider its economic significance determination in light of these potentially substantial costs and provide a more complete assessment of the Proposed Rule's economic consequences.

## II. DHS disregards legitimate reliance interests of employers, workers, and families.

An agency changing a long-standing regulatory policy is required under the Administrative Procedure Act (APA) to acknowledge the change, articulate a rational connection between facts found and choices made, and consider serious reliance interests engendered by its

[9] 91 Fed. Reg. at 57817.
[10] *Id.* at 57822 n.54.
[11] *Id.* at 57821 tbl.3.

prior policy.[12] DHS fails to adequately account that employers, workers, and families have structured recruitment pipelines, project timelines, home mortgages, and dual-career marriages around the 60-day grace period, deeming these established interests "misplaced" on the grounds that the grace period is discretionary.[13] DHS' conclusion is unpersuasive in light of distinct reliance interests created by a longstanding, codified regulatory framework. Specifically, existing law permits qualifying workers to be treated as maintaining status for a limited period following cessation of employment.[14] As the U.S. Supreme Court has previously held, the discretionary features of a benefit program do not exempt an agency from weighing reliance interests established under a decade of codified policy.[15] That obligation applies with greater force to a codified regulation that has governed since 2017.

The consequences of eliminating the grace period also extend to workers' spouses and dependent family members.[16] Many dependents maintain lawful status through a principal worker's nonimmigrant classification and certain spouses are independently authorized to work in the U.S. An abrupt loss of status can disrupt multiple careers within the same household, create uncertainty for families, and impose additional costs on American employers. DHS should account for these consequences when evaluating the Proposed Rule's economic and operational effects.

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[12] *FDA v. Wages and White Lion Investments, LLC*, 604 U.S. 542, 570 (2025) (clarifying that an "agency must be cognizant that longstanding policies may have 'engendered serious reliance interests that must be taken into account.'" (quoting *Encino Motorcars, LLC v. Navarro*, 579 U. S. 211, 221–22 (2016) (internal quotation marks omitted)).

[13] 91 Fed. Reg. at 57815 n.34 (citing *FDA v. Wages and White Lion Investments, LLC*, 604 U.S. 542, 585 (2025)).

[14] *See* 8 C.F.R. § 214.1(l)(2).

[15] *Department of Homeland Security v. Regents of the University of California*, 591 U.S. 1, 30–33 (2020).

[16] *See, e.g.*, Madeline Zavodny, *Waiting to Work: Employment Among Dependent Spouses of H-1B Visa Holders in the U.S.*, 31 Applied Economics Letters 984 (2024), https://doi.org/10.1080/13504851.2022.2159006 (finding that expanded employment authorization for certain H-4 dependent spouses substantially increased their employment rate); Ayoung Kim et al., *US Immigration Policy and Brain Waste*, 66 Annals of Regional Science 209 (2021), https://doi.org/10.1007/s00168-020-01017-y (estimating approximately $28,000 in lost annual earnings per affected H-4 spouse, in 2014 dollars, attributable to employment restrictions); Economic Innovation Group, The Near-Term Fiscal Impact of H-1B Workers at the Federal and State-and-Local Levels 15 (Mar. 2026), https://eig.org/wp-content/uploads/2026/03/H-1B-Fiscal-Impacts.pdf (estimating that employment among dependent spouses increases average state and local fiscal contributions of H-1B households by approximately 52%, to $7,671 annually, relative to households with nonworking spouses).

These reliance interests extend beyond individual employment arrangements. Technology companies have developed recruitment practices, multiyear research programs, and workforce planning strategies around the availability of a reasonable transition period. Eliminating the grace period would require employers to reconsider established hiring procedures and introduce substantial uncertainty into projects dependent on specialized technical expertise. DHS must meaningfully assess these disruptions and explain why less burdensome alternatives, including preserving the grace period for workers pursuing timely petitions or retaining a shorter transition period, would not adequately address its stated administrative and enforcement objectives.[17]

## III. The Proposed Rule undermines congressional intent to facilitate mobility among highly skilled workers.

Congress enacted H-1B portability provisions to facilitate job mobility among highly skilled foreign workers.[18] Current law allows qualifying H-1B workers to begin employment with a new employer upon the filing of a non-frivolous petition, rather than waiting for final adjudication.[19] The existing 60-day grace period complements this statutory framework by providing a reasonable opportunity for workers who experience a cessation of employment to pursue new employment and remain in a period of authorized status during the transition.[20]

Eliminating the grace period would significantly undermine H-1B portability, which allows qualifying workers to begin employment with a new employer upon the filing of a petition rather than waiting for its approval. Portability is particularly important for workers who experience unexpected terminations or employment interruptions. DHS should explain how the Proposed Rule aligns with congressional intent when it would instead discourage employment mobility, delay hiring, and make highly skilled workers more dependent on their existing employers.

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[17] *Regents*, 591 U.S. at 30–33; *State Farm*, 463 U.S. at 43.
[18] *American Competitiveness in the Twenty-First Century Act of 2000*, Pub. L. No. 106-313, § 105, 114 Stat. 1251, 1253 (codified at 8 U.S.C. § 1184(n)).
[19] *Immigration and Nationality Act* 8 U.S.C. § 1184(n)(1); *see also* 8 C.F.R. § 214.2(h)(2)(i)(H).
[20] 8 C.F.R. § 214.1(l)(2).

## IV. DHS incorrectly suggests that terminated workers forced abroad can simply secure new visas and return within two months.

Official State Department data calls into question DHS's qualitative argument that workers can simply depart the U.S. and rapidly re-enter upon approval of a new employer petition. For example, U.S. Citizenship and Immigration Services (USCIS) data shows that Indian-born professionals represent 71% of all approved H-1B petitions.[21] According to State Department Global Visa Wait Times data, the next available appointments for petition-based visas (H, L, O, P, Q) at major U.S. consular posts in India range from one month in Kolkata to 6.5 months in Hyderabad, with waits of 3.5 months in New Delhi and 2.5 months in Chennai.[22] At several major posts, the consular appointment wait alone exceeds the two-month period DHS assumes for job searching and returning to the U.S., before accounting for petition preparation, USCIS adjudication, and international travel.[23] DHS provides no evidence explaining how its two month illustration accommodates multi-month consular backlogs.

## V. The Proposed Rule directly threatens American leadership in critical and emerging technologies, particularly AI, quantum computing, and semiconductor engineering.

According to DHS data, 99 percent of the 328,758 primary beneficiaries in these classifications who lost jobs or changed employers from FY2021 through FY2025 held H-1B status, and the H-1B workers whose new employers filed petitions within the grace period earned a median of $131,000 a year.[24] These professionals occupy essential technical roles across U.S. enterprise technology, cloud infrastructure, and AI research. Therefore, eliminating the 60-day transition window would disrupt critical hiring pipelines. Candidates who experience an

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[21] U.S. Citizenship & Immigr. Servs., Dep't of Homeland Sec., *Characteristics of H-1B Specialty Occupation Workers* (2025), https://www.uscis.gov/sites/default/files/document/reports/ola_signed_h1b_characteristics_congressional_report_FY24.pdf.

[22] *See* U.S. Dep't of State, Bureau of Consular Affairs, *Global Visa Wait Times*, https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/global-visa-wait-times.html (last visited Oct. 23, 2026) (reporting estimated wait times for the next available interview-required appointment for petition-based visas (H, L, O, P, Q) at U.S. consular posts in India, including Hyderabad, New Delhi, Chennai, Mumbai, and Kolkata).

[23] 91 Fed. Reg. at 57822 n.54.

[24] *Id.* at 57821–22.

interruption in employment could face greater difficulty relying on statutory H-1B portability to start new roles upon petition filing. Instead, fearing immediate out-of-status exposure if a petition encounters processing delays or Requests for Evidence, candidates may prefer to remain with their current employers until a Change of Employer petition is fully approved. This could extend time-to-hire, restrict talent mobility, and leave open positions in key technology sectors vacant for longer periods.

The Proposed Rule also overlooks the practical requirements of transferring H-1B employment between U.S. employers. Before filing a new H-1B petition, an employer generally must obtain certification of a Labor Condition Application from the Department of Labor, a process that ordinarily requires approximately seven working days.[25] Eliminating the grace period would leave workers who unexpectedly lose employment with no reasonable opportunity to complete even these preliminary administrative requirements before risking a failure to maintain status. This would disrupt routine lateral hiring, complicate workforce planning, and delay the onboarding of highly skilled professionals supporting critical research and development projects. Rather than strengthening American competitiveness, the Proposed Rule would introduce unnecessary uncertainty into an already complex immigration process.

## VI. The Proposed Rule offers limited administrative savings while shifting costs to other federal agencies.

DHS reports reviewing over 1.9 million filings between FY2018 and May 2026 (around 220,000 per year) that potentially require grace period screening.[26] However, DHS neglects to estimate the officer time saved per filing. By CCIA's estimates, applying a scenario where repeal eliminates ten full minutes of officer review per filing at the 2026 Washington-area GS-12, Step 5 rate, total annual USCIS savings equal roughly $3 million per year.[27] Under a more

[25] 20 C.F.R. § 655.740(a)(1); U.S. Dep't of Lab., Employment and Training Admin., *H-1B Labor Condition Application*, https://flag.dol.gov/programs/LCA.
[26] 91 Fed. Reg. at 57815.
[27] Trevor Wagener, *Ending H-1B Grace Period Fails Cost-Benefit Test*, CCIA Research Center (Oct. 2026), available at https://ccianet.org/articles/ending-h-1b-grace-period-fails-cost-benefit-test/; *see* U.S. Office of Personnel Management, 2026 Salary Table DCB, https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/26Tables/html/DCB_h.aspx ($55.62 per hour × DHS's 1.46 benefits multiplier).

conservative five minute review scenario where half of it survives repeal, annual savings fall to $745,000.[28] Comparing roughly $745,000 in central-scenario USCIS savings against $263.6 million in central-scenario costs yields a staggering cost-to-savings ratio of 354 to 1. Even CCIA's generous $3 million savings scenario is completely offset by about 1.6 calendar days of lost pay per worker across DHS's FY2025 cohort.[29]

Additionally, eliminating the grace period does not eliminate officer adjudicative review. Under existing regulations, USCIS adjudicators remain legally required to verify that an applicant maintained continuous status prior to approving an extension or change of status, and petitioners must still submit, and officers must still review, evidence of maintenance of status such as paystubs, W-2 forms, tax returns, contracts, work orders, and more.[30] Under a zero-day rule, a single day's gap can decide the case, and verifying whether a one day employment gap occurred requires even *more* precise, time-consuming evidentiary scrutiny.[31] In other words, review times are likely to increase as a result of the repeal, which would undermine DHS's claimed administrative savings.

Moreover, even under DHS' assertions, rather than reducing the federal workload, repealing the grace period merely transfers administrative burdens across the government. Thousands of workers may need to submit new visa applications abroad. Using the $205 petition-based visa fee as a rough proxy for consular processing cost, just 3,633 additional visa applications would offset USCIS's $745,000 in savings, while adding to the workload of already overstretched consulates.[32] Meanwhile, as DHS acknowledges, workers unable to depart immediately may receive NTAs.[33] Dividing EOIR's $844 million FY2025 enacted budget by 797,496 court completions equals approximately $1,058 per completion, an average budget ratio

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[28] *Id.*
[29] *Id.*
[30] 8 C.F.R. § 214.1(c)(6).
[31] Trevor Wagener, "Ending H-1B Grace Period Fails Cost-Benefit Test", Computer & Communications Industry Association Research Center, October 2026, available at https://ccianet.org/articles/ending-h-1b-grace-period-fails-cost-benefit-test/.
[32] *Id.*
[33] 91 Fed. Reg. at 57809.

offered for scale.[34] DHS's estimate of $204-$301 per person for an NTA covers only a single hearing appearance, even though a removal proceeding can require multiple appearances, and omits notice preparation, prosecution, adjudication, and legal fees.[35]

**Conclusion**

If finalized, the Proposed Rule would cause substantial economic damage, undermine U.S. technology leadership, and raise serious concerns under the APA. Accordingly, CCIA urges DHS to withdraw the Proposed Rule and retain the discretionary up to 60-day grace period codified at 8 C.F.R. § 214.1(l)(2).

Respectfully submitted,

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November 10, 2026

[34] Trevor Wagener, "Ending H-1B Grace Period Fails Cost-Benefit Test", Computer & Communications Industry Association Research Center, October 2026, available at https://ccianet.org/articles/ending-h-1b-grace-period-fails-cost-benefit-test/ .
[35] *Id.*

# APPENDIX A

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# Ending H-1B Grace Period Fails Cost-Benefit Test

*By Trevor Wagener, Chief Economist and Director of the Research Center, CCIA*

## Executive Summary

- Costs of ending exceed savings by about $121 million to $762 million a year across the three scenarios, with a central estimate of $263 million.
- Over ten years, the net cost is roughly $850 million to $5.4 billion in present value at a 7% discount rate. The central estimate is $1.8 billion at 7% and $2.2 billion at 3%.
- Every dollar of claimed USCIS savings comes with $42 to $5,118 in costs. In the central scenario, the ratio of costs to savings is 354 to 1.

**Table 1. Annual costs and benefits of eliminating the grace period, three scenarios**

| All units measured in $ millions per year except ratio of costs & Ten-year net cost | DHS scenario, FY2025 count | Central | High |
|---|---|---|---|
| **Costs** | | | |
| Lost pay of workers who must leave and return | $113.1 | $214.9 | $567.1 |
| Lost earnings of dependent spouses | $5.1 | $26.7 | $102.9 |
| Household airfare | $6.0 | $15.0 | $43.6 |
| Removal proceedings (government and worker) | $0.2 | $3.2 | $36.5 |
| Employer recruiting | $0.0 | $2.8 | $9.7 |
| Added consular workload | $0.3 | $1.0 | $2.4 |
| **Total costs** | **$124.5** | **$263.6** | **$762.2** |
| **Benefits** | | | |
| USCIS screening savings (illustrative) | $3.0 | $0.7 | $0.1 |
| **Net** | | | |
| **Amount by which costs exceed benefits** | **$121.5** | **$262.8** | **$762.1** |
| Ratio of Costs per $1 of savings | 42 to 1 | 354 to 1 | 5,118 to 1 |
| Ten-year net cost, present value at 7% ($ millions) | $853.6 | $1,846.1 | $5,352.6 |

Source: CCIA analysis of DHS, 91 FR 57807 (Sept. 11, 2026), and public data. DHS illustration, FY2025 count: DHS's own two-month illustration (fn. 54) at the $131,000 median wage, applied to DHS's FY2025 count of 5,178, with omitted costs at low values and generous USCIS savings. Central and High use mid-range and upper-range assumptions and include DHS's 1.46 benefits multiplier; High uses a FY2027 trend population. All columns are conditional scenarios that assume exposure across DHS's full administrative cohort. Components may not sum to totals because of rounding.

Since 2017, skilled workers in the H-1B, L-1, O-1, E and TN classifications have had a safety valve. If a job ends before their authorized stay does, they and their families may remain in status for up to 60 days while they line up a new employer, change status, or prepare an orderly departure. The Department of Homeland Security now proposes to eliminate that grace period. Unless otherwise authorized to remain, workers would be expected to leave the country the day their employment ends.

DHS rests its proposal on two claims: that the grace period burdens USCIS adjudicators, and that removing it better aligns the regulations with the statute. Neither claim is supported by the agency's own record. A careful look at the numbers DHS published shows a rule whose costs are larger than the agency acknowledges, whose administrative savings are unmeasured and partly illusory, and whose reasoning is vulnerable under settled administrative law.

Start with the agency's own numbers. At DHS's $131,000 wage benchmark, one additional month without pay for just 273 workers would exceed the roughly $3 million in annual USCIS savings from a scenario that eliminates ten minutes of review from every potentially relevant filing. DHS has not shown that the disruption its rule causes would stay below that threshold.

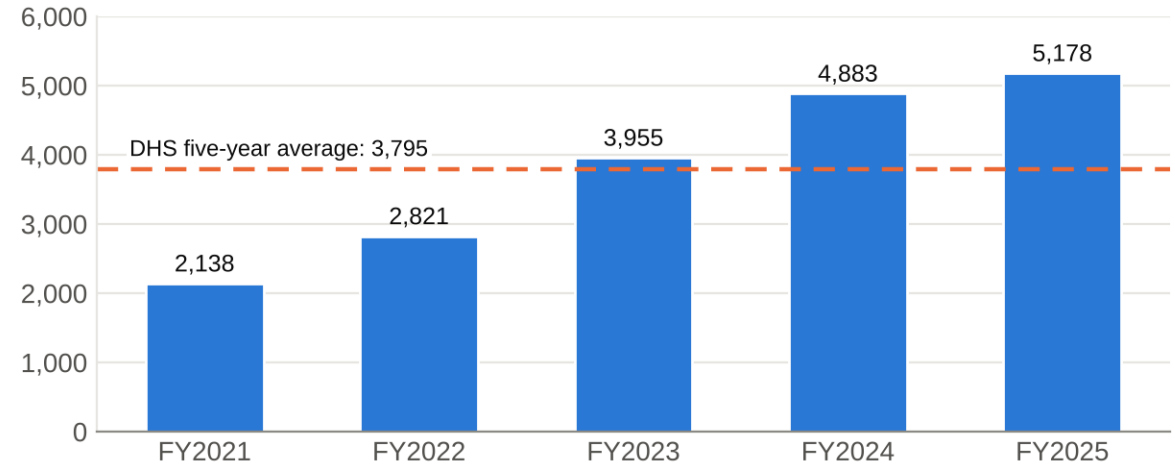
## DHS left its own math unfinished

In its regulatory impact analysis, DHS identifies 3,795 workers a year for whom a new employer filed a petition within 60 days after the prior petition was withdrawn, a proxy DHS treats as an upper-bound estimate of the population that could incur costs. In a footnote, it gives a per-worker example: a worker who needs as much as two months to search for a job and return would lose about two months of pay at the cohort's $131,000 median wage. Then, in its accounting statement, DHS reports the costs as "Not Estimated."

If every worker in DHS's own five-year average experienced the two-month loss DHS describes, the annual cost would be about $82.9 million. DHS's five-year average is also stale. The same table shows the count rising from 2,138 in FY2021 to 5,178 in FY2025, a 2.4-fold increase. FY2025 is 36 percent above the average DHS used for an analysis covering FY2027 through FY2036. Apply DHS's own per-worker illustration to DHS's own most recent count, and the figure reaches $113.1 million a year.

**Figure 1. DHS's own count of potentially affected workers more than doubled**

Workers in DHS's rehire proxy, by fiscal year, against the five-year average DHS used

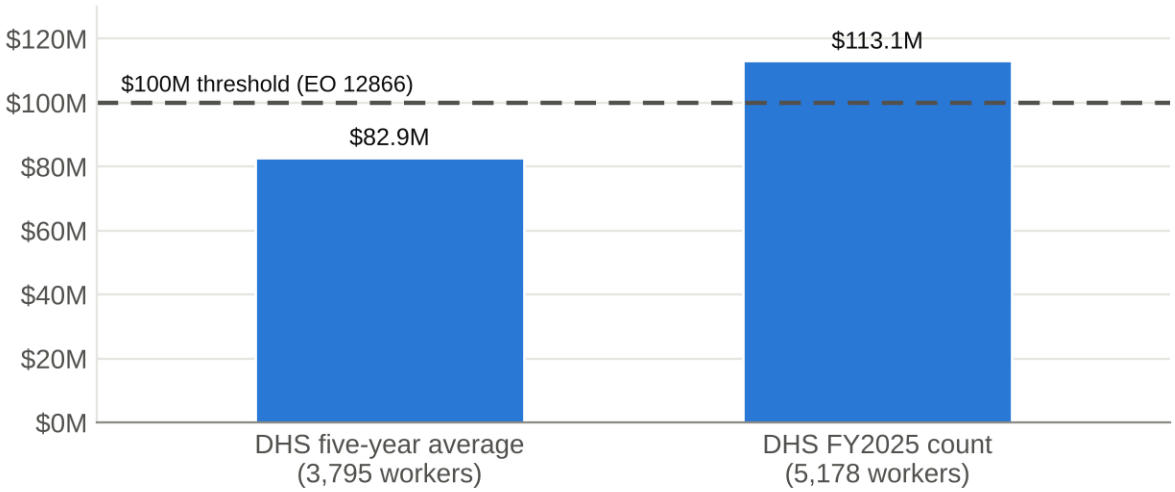



Source: DHS, 91 FR 57807 (Sept. 11, 2026), Table 3. Workers for whom a new employer filed a petition within 60 days after the prior petition was withdrawn.

That number matters. Executive Order 12866 designates rules with annual effects of $100 million or more as economically significant, which triggers a fuller regulatory analysis. DHS concluded this proposal falls short of that line without reporting the product of its own inputs. At a minimum, DHS owes the public a sensitivity analysis supporting that finding.

**Figure 2. DHS's own illustration, applied to its latest count, exceeds $100 million**

Annual wages lost if every worker lost the two months DHS describes ($ millions)




Source: CCIA analysis of DHS, 91 FR 57807, Table 3 and fn. 54 ($131,000 median wage x 2/12). Analyst scenario applying DHS's per-worker illustration to every worker in DHS's count; the NPRM reports neither product.

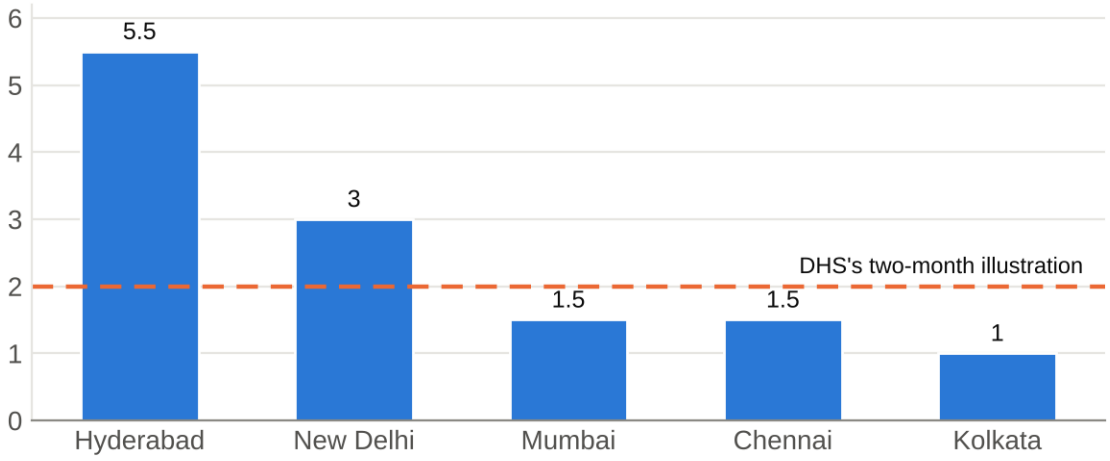
## The two-month “upper bound” collides with consular reality

DHS's two-month figure assumes a quick departure and return. Workers who need a new visa face a further source of delay, and India is especially relevant: Indian-born beneficiaries accounted for 71 percent of approved H-1B petitions in FY2024.

As of the State Department's September 17, 2026 data, the next available appointment for petition-based visas is 5.5 months away in Hyderabad and 3 months away in New Delhi. As of October 21, 2026, the wait time had increased to 6.5 months in Hyderabad and to 3.5 months in New Delhi, showing that the September 17, 2026 figures used in our analysis are by no means outlier or peak values. Either wait alone exceeds DHS's entire two-month allowance, before counting the job search, the petition, or the trip home. DHS offers no explanation of how its "upper bound" accommodates appointment availability like this.

**Figure 3. At two major posts, appointment waits alone exceed DHS's two months**

Next available petition-based (H, L, O) visa appointment at U.S. posts in India, in months




Source: U.S. Department of State, Global Visa Wait Times (snapshot Sept. 17, 2026); DHS, 91 FR 57807, fn. 54. Appointment availability only; excludes job search, petition approval and travel.

## The costs DHS waves away

DHS acknowledges many harms and then declines to measure them. Several can be quantified from public data.

Other pathways: In its FY2025 cohort, DHS identified 2,733 workers who filed to change or extend status and 438 who filed to adjust to permanent residence within 60 days after their prior petition was withdrawn. DHS's cost analysis prices none of them. The proposal also removes the grace-period window in which otherwise eligible workers can seek an initial compelling-circumstances work permit. DHS identified 49 beneficiaries who applied for compelling-circumstances work permits in its FY2021-FY2025 cohorts.

Families: USCIS approved more than 77,000 initial and renewal H-4 work permits in FY2023. When a principal's job ends today, a dependent spouse can keep working during the grace period. Under the proposal, that authorization ends with the principal's status, up to 60 days earlier. DHS acknowledges that dependent spouses would lose compensation. Its family

assessment then asserts that any financial effect "would not stem from this rulemaking." Those statements cannot both be right. Holding the principal's job loss constant, the spouse's earlier loss of work authorization, and the earnings that go with it, is a cost of repeal.

Enforcement: DHS concedes that workers who cannot leave on the day their job ends could receive Notices to Appear in immigration court, yet it predicts only a "marginal" increase from 37 such notices in FY2025. That baseline concerns H-1B beneficiaries who failed to maintain status beyond the existing grace period, so it does not measure the workers newly exposed when that period disappears. DHS then prices the consequence as a single hearing appearance costing $204 to $301 in time and travel. A removal proceeding can require multiple appearances, and a single appearance omits notice preparation, prosecution, adjudication, and legal fees. For scale, EOIR's $844 million in FY2025 enacted funding divided by 797,496 reported immigration-court completions equals about $1,058 per completion, a budget ratio rather than an estimate of what an additional proceeding costs. DHS notes that fees recover USCIS costs. Fee funding changes who pays for that work; the work itself remains.

Travel, consular work, and employers: Forced departures and returns impose travel costs. Every returning worker who needs a new visa adds work at an overstretched consulate. Employers that cannot wait face replacement hiring, reassignment, or vacancy costs. If a replacement requires a new cap number, the annual registration and lottery calendar can add many months. DHS assumes employers will simply find equally qualified substitutes or re-petition, and offers no evidence that either path is quick or costless. Nearly two-thirds of the 2,886 employers DHS identified are small businesses, the firms least able to absorb a long vacancy. Research on earlier H-1B restrictions finds that affected multinational firms expand employment at foreign affiliates. DHS should examine whether blocking domestic job transitions would push work abroad in the same way.

## The savings DHS claims are unmeasured and partly illusory

DHS's affirmative case rests on administrative burden. It reports that more than 1.9 million filings between FY2018 and May 2026 potentially required grace-period screening, about 220,000 a year. It never estimates how much time that screening takes.

A transparent scenario shows the scale of the claimed savings. Suppose every one of those filings consumed ten full minutes of officer time that repeal would eliminate entirely. That is a fifth of the average time USCIS reported for an entire Form I-129 adjudication in its 2016 fee review. At the 2026 Washington-area GS-12, Step 5 salary, loaded with DHS's own 1.46 benefits multiplier, the savings come to roughly $3 million a year.

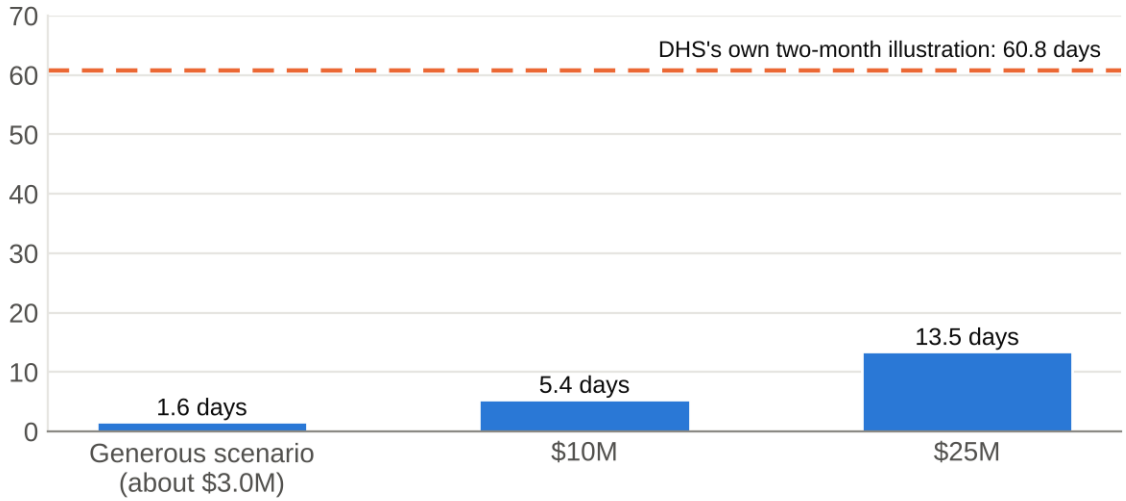
That scenario credits repeal with eliminating all ten minutes, even though essential status review would remain. Part of the work DHS calls burdensome is establishing when a worker's employment ended, and repeal does not eliminate it. Existing regulations, which the proposal leaves intact, still require USCIS to confirm that a worker maintained status before granting an extension, using evidence such as paystubs, W-2 forms, tax returns, contracts and work orders. Under a zero-day rule, a single day's gap can decide the case. Meanwhile, repeal shifts new work onto consulates, immigration courts, and ICE. If grace-period review averages five minutes per filing and half of it survives repeal, USCIS would save about $745,000 a year.

Using the $205 visa fee as a rough proxy for processing cost, just 3,633 additional visa applications would offset that amount. DHS should estimate the actual workload.

The comparison with private costs is stark. Spread across DHS's FY2025 cohort, the $3 million scenario is offset by about 1.6 calendar days' pay per worker. Even if DHS could document $25 million in annual savings, more than eight times the generous scenario, the break-even would be about 13.5 calendar days' pay per worker. Given multi-month consular waits, the agency should explain why it expects the disruption to be smaller.

**Figure 4. A few days' pay per worker offsets the claimed savings**

Calendar days of lost pay per worker that offset each assumed level of annual USCIS savings, FY2025 cohort




Source: CCIA analysis. FY2025 cohort of 5,178 workers at DHS's $131,000 median wage; a day's pay is annual pay / 365. Savings levels are assumptions, not estimates of DHS's actual savings.

DHS's second rationale, program integrity, fares no better. The proposal identifies no fraud pattern, no rate of abuse, and no incident data tied to the grace period. It also confirms that USCIS already has authority to shorten or deny a grace period for status violations, unauthorized work, fraud, national security concerns, or criminal convictions. DHS never explains why that targeted authority is inadequate.

## A record that invites legal challenge

An agency may change course, but it must "display awareness that it is changing position," offer "good reasons for the new policy," and "be cognizant that longstanding policies may have 'engendered serious reliance interests that must be taken into account.'" (FDA v. Wages & White Lion Invs., L.L.C., 604 U.S. 542, 570 (2025) (emphasis omitted) (quoting FCC v. Fox Television Stations, Inc., 556 U.S. 502, 515 (2009), and Encino Motorcars, LLC v. Navarro, 579 U.S. 211, 221–22 (2016)); see also Dep't of Homeland Sec. v. Regents of Univ. of Cal., 591 U.S. 1, 30 (2020)). It must also examine the relevant data and connect the facts it finds to the choice it makes (Motor Vehicle Manufacturers Association v. State Farm). This proposal strains against both standards.

Reliance. Employers have extended offers, timed projects, and recruited candidates on the understanding that a laid-off worker could change jobs without leaving the country. Families have built two-earner households around the same framework. DHS acknowledges that reliance and then discounts it as "misplaced" because the grace period is discretionary, citing FDA v. Wages and White Lion Investments. That passage concerned expectations about how an agency would exercise enforcement discretion. The grace period is a codified regulatory framework that preserves status under defined conditions. The Supreme Court has held that discretionary features do not excuse an agency from weighing reliance on a long-standing policy (*DHS v. Regents of the University of California*).

Prior agency reasoning. When DHS created the grace period, a commenter sought a separate 30-day period for H-1B workers facing involuntary termination, citing the time needed to document retaliation and find new work. DHS declined, explaining that the 60-day period already gave such workers sufficient time to seek new employment, change status, or prepare to depart (81 FR 82454). On the same page, DHS cited the grace period and compelling-circumstances work permits when declining other protections for workers facing retaliation or employer debarment. The proposal eliminates the first safeguard, narrows access to the second, and never addresses that rationale.

Statutory alignment. DHS invokes its broad discretion to set conditions of admission while also suggesting the grace period is inconsistent with the statute. If DHS believes the statute forbids a grace period, it should explain why the provisions it cites foreclose a temporary transition period it found consistent with the same statute in 2016. If it is making a policy choice, it must reasonably explain that choice in light of the harms it acknowledges, reliance interests, alternatives, and the evidence presented in comments.

Unanswered objections. In *Ohio v. EPA*, the Supreme Court stayed a federal rule, finding the challengers likely to succeed because the agency failed to reasonably respond to a significant concern raised in public comments. Before finalizing any rule, DHS should, at a minimum:

- disclose the query definitions behind its population counts;
- estimate the review time repeal would eliminate and the time that would remain;
- include the costs shifted to consulates, immigration courts, and ICE;
- test current consular delays against its two-month illustration; and
- explain the baseline it uses to dismiss family income losses.

## Conclusion

DHS can achieve administrative clarity without stranding workers and families. A presumptive grace period would do so:

- workers who otherwise qualify receive the period by default;

- the cessation date is documented in a standard format;
- the start and end dates are calculated automatically;
- a short list of disqualifying conduct replaces case-by-case discretion.

That design removes the discretionary review DHS calls burdensome while preserving orderly transitions. At a minimum, DHS should protect workers already in a grace period or with pending filings when any final rule takes effect.

DHS has not shown that the grace period costs the government much, and the grace period provides meaningful benefits. It keeps skilled workers employed in the United States and paying taxes, keeps families intact, and keeps employers from losing talent to a calendar. Nor has DHS shown that eliminating it would save meaningful resources, while its own data suggest the costs would be far larger than it admits. The agency should withdraw the proposal or, at the very least, complete the analysis its own numbers demand.