



Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications

Small Entity Compliance Guide

- **Introduction and Purpose**

The U.S. Department of Homeland Security (DHS) has prepared this document as the small entity compliance guide required by section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. Small entity compliance guides summarize and explain final rules DHS has adopted, but they are not a substitute for the rule itself. Only the final rule can provide complete and definitive information regarding its requirements.

- **Overview**

On June 22, 2020 DHS issued a final rule at [85 FR 37502](#) that removes a DHS regulatory provision stating that U.S. Citizenship and Immigration Services (USCIS) has 30 days from the date an asylum applicant files the initial Form I-765, Application for Employment Authorization, (EAD application) to grant or deny that initial employment authorization application. This rule also removes the provision requiring that the application for renewal must be received by USCIS 90 days prior to the expiration of the employment authorization.

The effective date of the final rule is August 21, 2020. This guidance restates some of the information in the final rule, particularly the information related to small entities. However, this guidance does not replace the final regulations; instead, it is a reference for small entities seeking information concerning the potential impact of the regulations on them.

- **Summary of the Final Rule Provisions**

This final rule adopts the regulatory text proposed by DHS in the Notice of Proposed Rulemaking (NPRM) published in the Federal Register on September 9, 2019, in all material respects, after DHS considered the public comments received. *See Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications*; Proposed Rule, [84 FR 47148](#). This final rule makes the following major revisions to the application for employment authorization for asylum seekers program regulations:

1. Elimination of the 30-day adjudication timeframe for initial filings; and
2. Elimination of the requirement that applications to renew employment authorization must be received by USCIS 90 days prior to the expiration of the applicant's employment authorization.

- **Entities Subject to the Rule**

As DHS explains in the Final Regulatory Flexibility Analysis (FRFA), this rule only removes the 30-day adjudication timeframe and the corresponding 90-day renewal requirement. For the purposes of the RFA, DHS estimates that approximately 119,000 aliens may be impacted by this rule annually. Additionally, the RFA does not consider individuals to be small entities. This rule may result in lost compensation for some initial applicants whose EAD processing is delayed beyond the previous 30-day regulatory timeframe. However, this rule does not directly regulate employers.

The RFA does not require agencies to examine the impact of indirect costs to small entities. Regardless, DHS presented the FRFA on the grounds that the rule could indirectly impact small entities who incur opportunity costs by having to choose the next best alternative to immediately filling the job the asylum applicant would have filled. DHS is unable to identify the next best alternative to hiring a pending asylum applicant and is therefore unable to reliably estimate the potential indirect costs to small entities from this rule. In addition, a portion of the impacts of this rule may also be borne by companies that would have hired the asylum applicants had they been in the labor market earlier but were unable to find available workers. These companies would incur a cost as they may experience reduced productivity and/or potential profits that the asylum applicant may have provided if the asylum applicant had been in the labor force earlier. Again, DHS has no way to estimate these possible impacts to small entities.

- **Description of the Projected Reporting, Record-keeping, and Other Compliance Requirements of the Regulations, Including an Estimate of the Classes of Small Entities that Are Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record**

This rule would not directly impose any reporting, recordkeeping, or other compliance requirements on small entities. Additionally, this rule would not require any additional professional skills.

- **Resources to Support Compliance Among Small Entities**

DHS is not aware of any alternatives to the rule that accomplish the stated objectives and that would minimize the economic impact of the rule on small entities as this rule imposes no direct costs on small entities.

The final regulations are on the Office of the Federal Register web site at <https://www.federalregister.gov/documents/2020/06/22/2020-13391/removal-of-30-day-processing-provision-for-asylum-applicant-related-form-i-765-employment>.

USCIS is happy to assist small entities with questions regarding the final rule. Please refer to the above website for information on directing questions to the help desk via phone and other inquiries and resources.

Resources for small entities are available at <https://www.uscis.gov/legal-resources/small-business-regulatory-enforcement-fairness-act-sbrefa>. USCIS can help small entities with questions about the final rule. Please refer to the above website for additional information and resources for addressing inquiries and resources.