Economic Policy Institute 40 YEARS
THE WORKING PEOPLE'S THINK TANK

EPI comment on DHS elimination of the 60-day grace period for workers in the E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1, and TN visa programs

Public Comments • By Daniel Costa • November 10, 2026

Submitted via FederalRegister.gov

Office of Policy and Strategy
United States Citizenship and Immigration Service (USCIS)
Department of Homeland Security (DHS)
5900 Capital Gateway Drive
Camp Springs, MD 20746

Re: U.S. Department of Homeland Security, *Eliminating the Discretionary 60-Day Grace Period*, Notice of Proposed Rulemaking, CIS No. 2858-26, DHS Docket No. USCIS-2026-0364, RIN 1615-AD22, 91 Fed. Reg. 57807 (September 11, 2026).

The Economic Policy Institute (EPI) is a nonprofit, nonpartisan think tank established in 1986 to include the needs of low- and middle-income workers in economic policy discussions. EPI conducts research and analysis on the economic status of working America, proposes public policies that protect and improve the economic conditions of low- and middle-income workers—regardless of immigration status—and assesses policies with respect to how well they further those goals. EPI submits these comments on the Department of Homeland Security's (DHS) Notice of Proposed Rulemaking (NPRM) regarding the elimination of the discretionary 60-day grace period for certain nonimmigrants in the E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 or TN classifications. EPI has researched, written, and commented extensively on the U.S. system for labor migration, including in particular, the H-1B and L-1 programs, and other temporary work visa programs and green cards. EPI has published extensively on issues related to H-1B wage levels and employer usage and abuse of H-1B and other visa programs.[1]

EPI opposes the proposed rule and believes it arbitrary and capricious, and will potentially harm over a million workers in nonimmigrants statuses, as well as U.S.-born workers who are similarly employed, and have significant negative economic impacts across numerous industries that have not been considered or calculated by DHS. The ultimate impact will be to grant employers with even more power to exploit H-1B and other visa programs for university-educated workers with impunity and to degrade standards generally for workers in professional occupations. Rather than eliminating the 60-day grace

SECTIONS

1. Over one million workers will be impacted by the proposed rule, many of whom are in the green card backlog. • 2
2. U.S. temporary work visa programs lack adequate regulation, worker protections, and labor standards enforcement. • 2
3. The ability to leave an abusive employment situation is a fundamental worker right and DHS is proposing to eliminate it, which will degrade wages and working conditions. • 4
4. Many of the workers impacted by the rule have resided in the United States for over a decade and have spouses employed in the United States and U.S. citizen children. • 5
5. DHS has not calculated the economic impact of stripping over one million workers of an essential component of their workplace rights. • 6
6. Conclusion: DHS should rescind the

period established at 8 CFR § 214.1(l)(2), DHS should extend the grace period to 120 days. proposed rule and instead increase the grace period to 120 days. • 7

Over one million workers will be impacted by the proposed rule, many of whom are in the green card backlog.

DHS does not attempt to estimate the total population of workers currently employed in the impacted visa classifications of E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 and TN. The Office of Homeland Security Statistics could likely have provided an estimate for the NPRM. The lack of an estimate prevents the public from understanding the size of the total stock of workers for whom the NPRM would strip of the ability to leave an abusive or lawbreaking employer, forcing them to risk their ability to reside and work in the United States, or to even have enough time to gather their belongings before they are considered out of status and at risk of detention and deportation.

We have provided a rough estimate shown below in **Table 1** on the total stock of workers employed in the impacted classifications as of fiscal year (FY) 2019, which is just over one million. (a more recent year was not chosen because of data limitations in multiple classifications.) The vast majority are in the H-1B program with over 583,0000 workers employed, as well as the L-1 program with 200,000, and E-2 and TN where over 100,000 are employed in each.

Further, a significant share of workers in this population are on the path to lawful permanent residence (i.e., getting a green card), meaning their employer has submitted an I-140 petition to adjust their status. But because of annual numerical limits and country caps on green cards, there are significant wait times that can often last decades for applicants. In total, there are an estimated 1.2 million people in the employment-based green card backlog.[2] While there is no official estimate of the shares in the different visa or status classifications, data on permanent labor certifications—the first step towards getting a green card for most H-1B workers—show that the vast majority are likely to be in H-1B status. In 2023, 64.3% of permanent labor certifications were for H-1B workers and 4.8% were for L-1 workers, accounting for a total of 69.1% of labor certifications in just those two classifications.[3]

U.S. temporary work visa programs lack adequate regulation, worker protections, and labor standards enforcement.

Through numerous reports, commentary, and testimony over many years, EPI has shown how temporary work visa programs—including the categories implicated by the proposed

Table 1

Over 1 million people will lose a key worker protection if DHS eliminates the 60-day grace period

Estimated number of temporary migrant workers employed in the United States in classifications impacted by DHS proposed rule eliminating the 60-day grace period, 2019

Nonimmigrant visa classification	Number of workers employed, 2019
E-1 visa for treaty traders and their spouses and children	6,668
E-2 visa for treaty investors and their spouses and children	100,000
E-3 visa for Australian specialty occupation professionals	16,858
H-1B visa for specialty occupations	583,420
L-1 visa for intracompany transferees	200,000
O-1 visa for persons with extraordinary ability	32,067
TN visa or status for Canadian and Mexican nationals in certain professional occupations under NAFTA/USMCA	113,194
Total	1,052,207

Economic Policy Institute 40

Notes: Methodology for calculating the number of workers derived from Daniel Costa and Jennifer Rosenbaum (see reports in Source), with updates by the author. All references to a particular year should be understood to mean the U.S. government's fiscal year (Oct. 1–Sept. 30). See proposed rule at U.S. Department of Homeland Security, *Eliminating the Discretionary 60-Day Grace Period*, Notice of Proposed Rulemaking, CIS No. 2858-26, DHS Docket No. USCIS-2026-0364, RIN 1615-AD22, 91 Fed. Reg. 57807 (September 11, 2026).

Source: See methodology in Daniel Costa and Jennifer Rosenbaum, *Temporary Foreign Workers by the Numbers: New Estimates by Visa Classification*, Economic Policy Institute, March 2017; and see Table 3 in Daniel Costa, *Temporary Work Visa Programs and the Need for Reform: A Briefing on Program Frameworks, Policy Issues and Fixes, and the Impact of COVID-19*, Economic Policy Institute, February 2021. Bureau of Consular Affairs, "Nonimmigrant Visa Statistics," U.S. Department of State; U.S. Government Accountability Office, *Nonimmigrant Investors: Actions Needed to Improve E-2 Visa Adjudication and Fraud Coordination*, GAO-19-577, July 2019. H-1B estimate derived from United States Citizenship and Immigration Services, *H-1B Authorized-to-Work Population Estimate*, Office of Policy and Strategy, Research Division, June 2020. TN estimate derived from Kevin Shih, *30 Years of the TN Visa: New Data and Trends on TN Professionals in the US Labor Market*, Baker Institute for Public Policy, Rice University, 2024, including 2019 raw data provided to the author. L-1 estimate derived from 2019 data in Bryan Baker, *Population Estimates for Nonimmigrants Residing in the United States: Fiscal Years 2019 to 2024*, Office of Homeland Security Statistics, August 12, 2025, with adjustment made by the author.

rule that allow employers to recruit and hire mostly university-educated workers from abroad—represent a flawed employment model that restricts workers' rights by giving employers control over their workers' immigration status.[4] The H-1B program's inadequate wage rules and worker protections, and lack of enforcement from the U.S. Department of Labor (DOL), and the fact that the E-1, E-2, E-3, L-1, O-1 and TN programs have zero wage or worker protections, are directly contributing to the undercutting of U.S. labor standards.[5] The programs lack adequate regulations and enforcement to protect workplace rights and fail to provide workers with a pathway to becoming lawful permanent residents or U.S. citizens, leaving workers indentured for years and even decades. Given this reality, DHS should put in place measures—like grace periods, visa portability, and

deferred action for workers with bona fide workplace complaints—that can act as safety valves for workers employed with nonimmigrant visas that need to leave an abusive and/or illegal employment situation. Instead, DHS is making conditions much worse for this cohort of workers by removing their freedom to walk away from an employer and seek employment elsewhere. It is exacerbating the already disastrous situation it has caused for workers when it rescinded the process established in 2023 that allowed workers the opportunity to apply for immigration protections when assisting a qualifying labor agency in conducting an employer investigation.

The ability to leave an abusive employment situation is a fundamental worker right and DHS is proposing to eliminate it, which will degrade wages and working conditions.

The vast majority of workers in the United States can leave an abusive employment situation—for example when they are not being paid the wages promised or when conditions are illegally hazardous—and seek alternative employment without a penalty. They are also able to report labor and employment law violations to the relevant state and local labor standards enforcement agencies without fear or any immediate penalty. This freedom to leave an employer acts as a check on the power of employers, so that they do not offer conditions that are unbearably and illegally poor. In short, workers who can change jobs or leave a lawbreaking employer without fear can bargain more effectively for fair and decent wages and seek career advancement opportunities they are qualified for. While this may seem like common sense, there is research to support it. For example, Mukhopadhyay and Oxborrow found that the wage gain associated with moving from an H-1B visa to an employment-based green card was $11,860 per year.[6]

Statutes and regulations in temporary work visa programs, however, put migrant workers in a nonimmigrant status into a much more precarious and dangerous situation. Such workers do not have equal rights: Most visa programs do not permit migrant workers to easily leave a job or permit them to change jobs, making it difficult for them to leave an abusive employment situation. In essence, these visa programs operate in practice to create a labor market monopsony for employers—awarding employers greater leverage over their workers[7]—and growing research has shown that even modest amounts of employer monopsony power are utterly corrosive to workers' ability to bargain for better wages.[8] In the limited visa programs where workers may have the ability to change jobs, many find it difficult in practice, because the U.S. government has not created a sensible and holistic system allowing them to find new opportunities in a reasonable amount of time.[9]

In addition, many workers have invested thousands of dollars to recruiters to obtain their temporary job, often taking on significant amounts of debt to do so, whether it's in the H-2A, H-2B, or H-1B programs, or for employment-based (EB) green cards. If leaving a job means sacrificing a valid immigration status and the opportunity to continue working in the United States and to earn back the investments made, then workers are much more likely to opt to remain in an abusive employment situation, which degrades wages and working conditions—not just for the migrant workers themselves, but also for U.S. workers who are similarly employed.

Migrant workers in the impacted classifications will be far less likely to file complaints when employers violate the law, if it means risking a retaliatory termination that would result in the worker's immediate loss of status and investments and triggering the need to depart the United States. If an employer unlawfully retaliates against a worker, there would be insufficient time to file a complaint with the relevant government agency, whether seeking reinstatement or back pay for wage and hour violations—and if the worker is a union member, there would be insufficient time to file a grievance through any established mechanisms. In fact, there would be no time to do so, since the worker must depart immediately after their termination.

As we've stated on numerous occasions and in multiple publications, workers in H-1B and other nonimmigrant statuses at a disadvantage in the workplace vis-à-vis their U.S. counterparts because they have significantly less job mobility based on their temporary and precarious immigration status. But with the 60-day grace period created in its 2016 regulation, DHS took a major step towards leveling the playing field between employers and workers in the E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1, and TN classifications. While nevertheless insufficient to remedy the known flaws in work visa programs, the grace period was supported broadly by unions and worker advocacy groups. By proposing to eliminate one of the few worker protections in the targeted visa programs—impacting over one million workers—DHS is taking a major step backwards when it comes to protecting labor standards for U.S. workers and migrant workers. Overnight, one million workers will become indentured to their employers. Those one million workers are employed in fields as diverse as information technology, artificial intelligence, health care and medicine, engineering, and finance. U.S. workers in those fields will also be impacted negatively by their colleagues lacking workplace rights.

Many of the workers impacted by the rule have resided in the United States for over a decade and have spouses employed in the United States and U.S. citizen children.

Many of the workers impacted by the rule have resided in the United States for over a

decade and have U.S. citizen children, and have made long term economic investments, such as purchasing homes, and are well integrated into their local communities. Cutting off the ability for these workers to find alternative employment and in many cases to continue on the path to a green card if they are terminated or laid off at work, or because their employer has engaged in unethical or illegal behavior, and forcing them to immediately depart the country, is not justified by any of the arguments or evidence presented by DHS in the NPRM.

Although no official count is available, there are hundreds of thousands of spouses of H-1B, L-1, and O-1 principal nonimmigrants who are likely employed and will also be impacted by elimination of the 60-day grace period. They will lose their employment and their employers will abruptly lose employees who will be forced to immediately depart the United States, disrupting the economy and labor market. Tens to hundreds of thousands of children—some share of whom are in a nonimmigrants status, and some share of whom are U.S. citizens—will also be impacted. Those children will have their education severely disrupted and interrupted, as parents will have no time to formally withdraw them from school and get their records in order, or to find another school in the country of origin.

The significant equities accrued, especially by long-term nonimmigrant workers, and the interest and well-being of the families who rely on them, significantly outweighs the administrative burdens which DHS overstates and primarily cites as their justification for eliminating the 60-day grace period.

DHS has not calculated the economic impact of stripping over one million workers of an essential component of their workplace rights.

DHS has failed to consider or estimate the significant costs that will be incurred not just by the more than one million nonimmigrant workers themselves, but also U.S. citizens, lawful permanent residents, and other workers with employment authorization documents due to the increased restriction on worker mobility in these visa programs. In fact, various economic studies have shown that limiting worker mobility has a direct negative effect on the wages of all workers in a labor market, even those not subject to those limitations.[10] Eliminating the 60-day grace period will ultimately result in one million workers being indentured to their employers in numerous critical industries.

Conclusion: DHS should rescind the proposed rule and instead increase the grace period to 120 days.

As discussed above, a grace period of only 60 days is insufficient to permit workers in the E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 and TN classifications—who have been recruited from abroad and hired to participate and contribute to the U.S. labor market—to get their affairs in order, which may require selling a home and pulling children out of school. It is irrational, cruel, and arbitrary, and capricious to require such workers to depart the United States immediately, solely due to the whims of U.S. employers. Such workers should be permitted an adequate amount of time to find alternative employment in the United States, as well as to get their affairs in order if they choose to depart the country. Their spouses who are legally employed should also be permitted to benefit from an adequate grace period, which will benefit not just them, but the U.S. employers who hire them, who are provided with an opportunity to seek a replacement with a grace period, rather than having an employee who is required to depart the country immediately when their spouse's employment is terminated.

DHS should rescind the NPRM, but as noted above, the 60-day grace period status quo, and the portability provisions in the implicated classifications, are inadequate to protect workers and labor standards. Instead, DHS should issue a new proposed rule to increase the grace period to 120 days. If deemed necessary, DHS could determine a shorter grace period for nonimmigrant workers who have resided in the United States for shorter periods. For example, a worker employed in nonimmigrant status for over three years could be entitled to a 120 day grace period, while a worker employed for fewer than three years could be entitled to a shorter period of at least 90 days.

Regards,

Daniel Costa, Esq.
Director of Immigration Law and Policy Research
Economic Policy Institute

Endnotes

1. See for example, Daniel Costa and Ron Hira, *H-1B visas and prevailing wage levels: A majority of H-1B employers—including major U.S. tech firms—use the program to pay migrant workers well below market wages*, Economic Policy Institute, May 4, 2020; Ron Hira and Daniel Costa, *New evidence of widespread wage theft in the H-1B visa program: Corporate document reveals how tech firms ignore the law and systematically rob migrant workers*, Economic Policy Institute, December 9, 2021.
2. National Foundation for American Policy, *Employment-Based Immigration Backlogs and Waiting Times*, NFAP Policy Brief, August 2026.

3. Office of Foreign Labor Certification, "Permanent Employment Program – Selected Statistics, Fiscal Year (FY) 2023," Employment and Training Administration, U.S. Department of Labor.

4. For more background on temporary work visas, their flaws, and proposed reforms, see Daniel Costa, *Temporary Work Visa Programs and the Need for Reform: A Briefing on Program Frameworks, Policy Issues and Fixes, and the Impact of COVID-19*, Economic Policy Institute, February 2021.

5. See for example, Daniel Costa and Ron Hira, *H-1B visas and prevailing wage levels: A majority of H-1B employers—including major U.S. tech firms—use the program to pay migrant workers well below market wages*, Economic Policy Institute, May 4, 2020; Ron Hira and Daniel Costa, *New evidence of widespread wage theft in the H-1B visa program: Corporate document reveals how tech firms ignore the law and systematically rob migrant workers*, Economic Policy Institute, December 9, 2021; Lauren Kaori Gurley, "Analysis Claims Migrant Tech Workers Have Been Underpaid by Tens of Millions," Vice News, December 9, 2021; Centro de los Derechos del Migrante, *Coerced under NAFTA: Abuses of Migrant Workers in the TN Visa Program and Recommendations for Reform*, 2017; George Avalos, "Workers Paid $1.21 an Hour to Install Fremont Tech Company's Computers." *The Mercury News*, October 22, 2014; Farah Stockman, "Teacher Trafficking: The Strange Saga of Filipino Workers, American Schools, and H-1B Visas," *Boston Globe*, June 12, 2013; Maria Perez, "American farms recruit Mexican veterinarians for jobs as animal scientists — but the real work is milking cows and cleaning pens for low pay," *Milwaukee Journal Sentinel*, December 4, 2019 (updated Feb. 18, 2020).

6. Sankar Mukhopadhyay and David Oxborrow, "The Value of an Employment-Based Green Card," *Demography* 49: 219–237, February 2012.

7. Bivens and Shierholz broadly define "monopsony power" as "the leverage enjoyed by employers to set their workers' pay." See Josh Bivens and Heidi Shierholz, *What Labor Market Changes Have Generated Inequality and Wage Suppression?: Employer Power Is Significant but Largely Constant, Whereas Workers' Power Has Been Eroded by Policy Actions*, Economic Policy Institute, Dec. 12, 2018.

8. Eric M. Gibbons et al., "Monopsony Power and Guest Worker Programs," IZA Institute of Labor Economics, Discussion Paper no. 12096, January 2019.

9. For a discussion about H-1B and TN visa portability in practice, see Daniel Costa, "Is portability a panacea? Changing employers in US temporary migration programmes," chapter 8 in Christiane Kuptsch and Fabiola Mieres (eds.), *Temporary labour migration: Towards social justice?* edited volume, International Labour Organization, February 2025.

10. See for example, the economic literature on noncompete clauses, including, Evan Starr, "The Economics of Noncompete Clauses," *Journal of Economic Perspectives* 40, no. 1 (2026): 139-166;, Matthew Johnson, Kurt Lavetti, and Michael Lipsitz, "The Labor Market Effects of Legal Restrictions on Worker Mobility," available at SSRN, June 6, 2020.