U.S. Chamber of Commerce

1615 H Street, NW
Washington, DC 20062-2000
uschamber.com

November 6, 2026

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: Comments of the U.S. Chamber of Commerce on the Notice of Proposed Rulemaking Eliminating the Discretionary 60-Day Grace Period DHS Docket No. USCIS-2026-0364; RIN 1615-AD22

Dear Officer:

The U.S. Chamber of Commerce ("the Chamber") respectfully submits these comments in response to the Department of Homeland Security's ("DHS") Notice of Proposed Rulemaking ("NPRM") published in the Federal Register on September 11, 2026.[1] The NPRM would eliminate the discretionary 60-day grace period currently codified at 8 C.F.R. § 214.1(l)(2) for nonimmigrant workers in the E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1, and TN classifications and their dependents.[2]

The Chamber represents employers of every size and across every sector of the economy, including businesses that rely on the nonimmigrant worker classifications at issue in this rulemaking to recruit, retain, and deploy highly skilled talent. The Chamber respectfully urges DHS to withdraw the NPRM, or at a minimum adopt a narrower, less disruptive approach that addresses any demonstrated compliance concerns without imposing unnecessary costs on American employers, workers, and the broader economy.

---

[1] Eliminating the Discretionary 60-Day Grace Period, 91 Fed. Reg. 57,807 (proposed Sept. 11, 2026) (to be codified at 8 C.F.R. pts. 204, 214).

[2] Fed. Reg. at 57,807 (Summary) (proposing to remove 8 C.F.R. § 214.1(l)(2)).

Discussion

I. The Grace Period Serves an Important Purpose.

DHS established the 60-day grace period in 2016 as part of the final rule implementing the American Competitiveness in the Twenty-First Century Act ("AC21"), which became effective on January 17, 2017.[3] DHS explained that the grace period was designed to allow high-skilled workers whose employment ceased before the end of the petition validity period to more readily pursue new employment where eligible, and to allow U.S. employers to more easily facilitate changes in employment for existing or newly recruited nonimmigrant workers.[4]

Under the current regulation, a covered nonimmigrant and qualifying dependents may be considered to have maintained status for up to 60 consecutive days, or until the end of the authorized validity period, whichever is shorter, despite cessation of the principal's employment or qualifying activity. The rule permits one such period per authorized validity period and does not itself authorize employment.[5] DHS retains discretion to shorten or eliminate the period in an individual case.[6]

This grace period is a measured transition rule that reflects the practical realities of employment separation and hiring in a dynamic economy. That framework has served an important public purpose. It protects orderly transitions, allows employers to recruit workers who are already present in the United States and have been vetted through the immigration system, and reduces the likelihood that a single job loss will immediately separate families, interrupt business operations, and push talent out of the U.S. labor market.

[3] 91 Fed. Reg. at 57,811.

[4] 91 Fed. Reg. at 57,807, 57,811–12.

[5] 8 C.F.R. § 214.1(l)(2); 91 Fed. Reg. at 57,811-12.

[6] *Id.*

II. DHS's Stated Rationales Do Not Justify Eliminating the Grace Period.

A. DHS's statutory argument is overstated.

DHS relies on INA § 214(a),[7] which authorizes the agency to prescribe the "time and conditions" of nonimmigrant admission, but now argues that the 60-day grace period is inconsistent with the statutory design because it allows workers to remain in lawful status after the employment or activity supporting their classification has ended.[8] DHS characterizes the grace period as a disconnect between status and eligibility and contends that eliminating it would better align the regulations with the underlying nonimmigrant classifications.[9] However, the same statutory authority DHS invokes to eliminate the grace period is the authority it used to create it.[10] Moreover, INA § 214(a) gives DHS discretion to establish conditions of admission; it does not compel immediate departure upon job loss. The grace period is a limited, discretionary transition rule that preserves status only briefly and under defined conditions, and DHS already retains authority to shorten or eliminate the period in individual cases.[11] Indeed, if DHS changes its prior position that a limited transition period is lawful and administrable, it should provide a reasoned explanation grounded in evidence and meaningfully address the reliance interests and less disruptive alternatives identified below, rather than treat statutory misalignment as dispositive without explaining why a brief, discretionary period is impermissible.

B. DHS's administrative-burden rationale is insufficient.

DHS justifies eliminating the 60-day grace period as a workload reduction measure, pointing to more than 1.9 million petitions and applications received from the beginning of fiscal year 2018 through May 20, 2026, for which USCIS says it potentially had to perform an initial grace-period assessment. However, this figure is a screening universe, not evidence of actual savings. DHS does not identify what share

---

[7] 8 U.S.C. § 1184(a).
[8] 91 Fed. Reg. 57807, 57809.
[9] *Id.* at 57808, 57813.
[10] *Id.* at 57811; *see also* Retention of EB-1, EB-2, EB-3 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant Workers, 81 Fed. Reg. 82398 (Nov. 18, 2016).
[11] 91 Fed. Reg. at 57808, 57812-13.

of these 1.9 million filings required more than an initial screen.[12] It does not quantify the time, cost, or resources that elimination would actually save.[13] Without that analysis, the claimed administrative benefit remains speculative.

Furthermore, eliminating the grace period will generate new, more complex burdens that outweigh any marginal screening efficiency:

- **A surge in rushed I-539 filings.** Without a grace period, nonimmigrant workers facing unexpected job loss will have to file I-539 applications to convert to B visa status immediately to avoid accruing unauthorized presence. This compressed timeline will drive a spike in filings prepared without comprehensive supporting documentation, forcing USCIS to issue substantially more Requests for Evidence before adjudication which is the opposite of streamlining.
- **Duplicative, sequential petitions for re-employed workers.** When an affected worker secures new employment, the new employer must file a separate petition to restore work authorization. Under current USCIS policy, that second petition cannot be adjudicated until the initial change-of-status application is approved. The grace period currently allows a single petition to accomplish this transition; eliminating it forces two sequential, interdependent filings per affected worker, doubling the active caseload and creating complex review dependencies for adjudicators, particularly where filings must be tracked across multiple sequential actions.
- **Offsetting burdens the NPRM itself acknowledges.** The proposal could increase referrals to immigration court, shifting workload onto the Department of Justice and Immigration and Customs Enforcement rather than eliminating it.
- **Spillover burden on consular posts abroad.** DHS's analysis does not account for this effect: workers with lapsed status will often need to depart the U.S. abruptly and seek new visa appointments at already resource-constrained embassies and consulates. Absent additional consular staffing, posts facing

[12] 91 Fed. Reg. at 57,815 & n.30 (citing DHS, USCIS, CDAO, CLAIMS3 & ELIS data queried Feb., Mar., and May 2026).

[13] *See* 91 Fed. Reg. at 57,815 -17 (acknowledging that "because each analysis is case specific… DHS cannot estimate the time this analysis adds to each adjudication").

this surge will have to either extend wait times or compress the scrutiny given to each interview — exporting the administrative cost rather than eliminating it.

In sum, the grace period currently enables a single, orderly petition process for workers transitioning between employers. Removing it does not streamline adjudication; it redistributes and multiplies the burden across several federal agencies while imposing severe hardship on affected workers and their families. DHS has not shown that the modest, unquantified screening savings it claims outweigh these substantial and largely unaddressed costs. DHS should withdraw this provision or, at minimum, provide a reasoned, quantified analysis of the net administrative effect before finalizing it.

C. DHS has not adequately weighed costs and benefits.

The NPRM acknowledges that the proposal may cause affected workers to incur lost income, that some workers may be put into removal (deportation) proceedings, and that some employers may experience temporary productivity losses.[14] DHS also estimates that attending immigration hearings would impose time and travel costs on affected individuals.[15] Yet the NPRM largely treats those effects qualitatively and does not provide the kind of practical, economy-wide analysis needed for a rule that would abruptly change settled expectations for employers, workers, and families.[16]

III. The Proposed Rule Will Harm American Employers

A. Employers will lose access to a critical talent pipeline.

The grace period serves a critical labor-market function as it allows American employers to recruit and hire nonimmigrant workers who have recently separated from another employer without unnecessary disruption. Under current law, a company that identifies a qualified H-1B worker within the grace period can file a new petition, and H-1B portability may permit the worker to begin employment upon filing of a nonfrivolous petition rather than waiting for final approval.[17] DHS itself recognizes the

[14] 91 Fed. Reg. at 57,816–17 (Table 1, Summary of Provisions and Impacts of the NPRM).
[15] 91 Fed. Reg. at 57,823 (estimating opportunity cost of time and travel costs to attend an immigration hearing in response to an NTA would range from $204.43 to $300.53 per person).
[16] *See* 91 Fed. Reg. at 57,817–18 (Table 2) (listing annualized monetized benefits and costs as "Not Estimated" and describing costs and benefits in largely qualitative terms).
[17] INA § 214(n), 8 U.S.C. § 1184(n), cited in 91 Fed. Reg. at 57,811 n.8.

practical role H-1B portability and the grace period play in facilitating these transitions.[18]

Eliminating the grace period removes that bridge. A worker whose employment ends would be expected to depart immediately absent other authorization to remain, forcing a prospective employer to wait out petition adjudication, visa processing, travel, and readmission before the worker can resume work.[19] In competitive labor markets, that delay carries real costs: jobs go unfilled, projects stall, and qualified candidates are lost to competitor firms or competitor countries that can onboard talent faster.

This is particularly shortsighted given who these workers are. High-skilled workers already in the United States have been vetted by DHS and represent significant training and investment by U.S. employers. Retaining this talent rather than pushing it out over an administrative technicality is in the national interest, supporting the critical industries that depend on top international talent to remain competitive.

B. Immediate departure is not a workable compliance standard.

The NPRM repeatedly frames the proposed rule as requiring departure "immediately" upon cessation of the employment or activity on which status was based, unless the worker is otherwise authorized to remain.[20]

Employment separations do not occur in a vacuum. Workers may need time to arrange travel, address housing, coordinate school transitions for children, consult counsel, and determine whether another lawful status or pending immigration benefit provides authorization to remain. Employers likewise need orderly processes to manage transitions and comply with program rules. Eliminating the grace period would turn routine workforce changes into immediate immigration crises, generating confusion and hardship without a corresponding program-integrity benefit.

---

[18] 91 Fed. Reg. at 57,819.

[19] 91 Fed. Reg. at 57,807 (Summary) (describing the rule as "requiring an alien to depart from the United States immediately upon his or her failure to maintain the employment or activity… unless otherwise authorized to lawfully remain in the United States").

[20] *See, e.g.,* 91 Fed. Reg. at 57,807, 57,813–14 (using this formulation throughout the preamble).

IV. Portability Benefits the U.S. Labor Market, Including American Workers

The NPRM does not adequately address the labor-market value of portability. Portability is not simply a benefit to foreign workers. It is a feature of a healthy labor market. When workers can move to better matches, employers can fill the necessary roles more efficiently, and the economy benefits from better allocation of skills, higher productivity, and stronger competition for talent.

Cornell Law School's Migration and Human Rights Program has identified greater worker mobility as a way to improve worker protections, employers' access to talent, and the responsiveness of the employment-based system to a changing labor market.[21] The 60-day grace period does not eliminate all of those constraints, but it mitigates the most abrupt consequence of job loss and gives workers and employers a limited window to pursue lawful alternatives. Removing that window would further tie workers to a single employer and reduce the practical mobility that supports fair competition in the labor market, and the stakes extend beyond individual bargaining power. Consequently, eliminating the grace period risks driving highly skilled talent out of the United States permanently, as impacted workers may seek opportunities with foreign competitors rather than navigate increased administrative friction, directly undermining U.S. competitiveness in strategic industries the current administration has designated as priority sectors.

The portability benefits also extend to American employers and American workers. Employers gain access to experienced, vetted workers already in the United States. Co-workers benefit when labor markets are not distorted by immobility and when all workers have greater ability to move away from poor matches and toward more productive opportunities. DHS's failure to evaluate these effects leaves a significant gap in the NPRM's economic analysis.[22]

---

[21] Cornell Law School, Migration and Human Rights Program, Cornell Law School's Migration and Human Rights Fellows Identify Worker Mobility as a Critical Element and Possible Rallying Point for Immigration Reform (July 23, 2026), https://sites.lawschool.cornell.edu/migration-human-rights/news/cornell-law-schools-migration-and-human-rights-fellows-identify-worker-mobility-as-a-critical-element-and-possible-rallying-point-for-immigration-reform/.

[22] *See* 91 Fed. Reg. at 57,816–20.

V. DHS Has Not Adequately Addressed Reliance Interests

DHS acknowledges that employers, workers, families, and communities may have relied on the grace period since it took effect in 2017.[23] The NPRM recognizes that employers may have made business arrangements based on the availability of in-country transitions and that workers and dependents may have made career and personal plans in reliance on a potential transition period.[24]

Moreover, employers have built workforce planning, immigration compliance systems, recruiting timelines, and transition processes around the existence of a limited grace period. Workers have accepted jobs, relocated families, enrolled children in school, and pursued long-term immigration processes with that rule in place. DHS responds that reliance is 'misplaced' because the period is discretionary and may be shortened or eliminated in an individual adjudication. But conditional protection can still inform planning; DHS should explain why those foreseeable arrangements warrant no transition protection.[25]

The NPRM proposes no transition period, grandfathering provision, or safe harbor for workers already within an otherwise available grace period when a final rule takes effect.[26] At a minimum, DHS should specify prospective applicability and preserve treatment under the existing rule for separations occurring before the effective date, including timely filed requests that depend on that period.

VI. DHS Has Not Adequately Considered Less Burdensome Alternatives

The Chamber urges DHS to consider targeted alternatives that would address any substantiated program-integrity concerns without eliminating the grace period for all covered workers and dependents. Less burdensome alternatives include:

---

[23] 91 Fed. Reg. at 57,819.

[24] 91 Fed. Reg. at 57,819.

[25] *See* 91 Fed. Reg. at 57,819–20.

[26] *See* 91 Fed. Reg. at 57,820 (Alternatives Considered) (describing only alternatives relating to scope and evidentiary standards, with no discussion of a transition period, grandfathering, or safe harbor for workers already relying on the current rule).

1. **Targeted use of existing discretion.** DHS already may shorten or eliminate the grace period in individual cases where the facts warrant, including cases involving status violations, unauthorized employment, fraud, national security concerns, or criminal convictions.
2. **A shorter grace period.** If DHS believes 60 days is too long, it could consider a shorter period that still provides a meaningful transition window.
3. **Narrow filing-based protection.** DHS could retain a defined transition window for workers who timely file a nonfrivolous change-of-employer, extension-of-stay, or change-of-status request, subject to the ordinary substantive eligibility and employment-authorization rules.
4. **Clearer documentation standards.** DHS could provide standardized evidence and notice procedures for documenting employment cessation, reducing adjudicative uncertainty without eliminating the transition period.
5. **Prospective implementation and grandfathering.** DHS could preserve the current rule for employment cessations predating a final rule's effective date and for timely filed requests relying on such a period, with clear instructions for dependents.

DHS discusses alternatives in the NPRM but dismisses them largely because they do not fully satisfy the policy of immediate departure.[27] If the agency's stated concerns are administrative burden and statutory alignment (*see* Section II.A. *supra*), it must meaningfully explain why targeted compliance tools, clearer documentation requirements, or a shorter transition period would not adequately address those concerns at lower cost.

VII. *The Proposed Rule Is Particularly Harsh for Dependent Family Members*

The proposed rule would also fall heavily on dependent spouses and children. Under the current regulation, dependents are covered by the same up-to-60-day period when the principal worker's qualifying employment ceases.[28] DHS recognizes

[27] 91 Fed. Reg. at 57,820 (Alternatives Considered) (rejecting partial elimination, a shortened grace period, and stricter evidentiary requirements because each "would not meet the goal of requiring aliens… to depart the United States upon cessation of the employment or activity… immediately").

[28] 8 C.F.R. § 214.1(l)(2), cited in 91 Fed. Reg. at 57,811 n.15.

that some dependent spouses may be authorized to work while children may be enrolled in school and families may be deeply integrated into their communities.[29] DHS reports a five-year average of 208,187 dependents associated with covered principal beneficiaries each year, with 239,649 in fiscal year 2022. These are annual dependent approval counts, not estimates of the dependents who used the grace period or would be affected by its elimination.[30]

Eliminating the grace period would remove this limited status protection for families upon the principal worker's separation from employment, unless another basis to remain applies. That result is needlessly harsh. A child could face sudden school disruption and a spouse could lose status or employment authorization while the family pursues a lawful alternative or arranges an orderly departure.[31]

VIII. The NPRM's Proxy Data Call for a More Careful Approach

The NPRM's data do not establish the full scale of the rule's effects. Using withdrawn and subsequently revoked Form I-129 petitions as a proxy, DHS estimates an annual average of 3,795 workers who had a new petition submitted within 60 days after withdrawal of a prior approved petition; DHS recognizes limitations in that proxy and cannot reliably identify all grace-period users or distinguish voluntary from involuntary separations.[32] DHS also estimates costs associated with immigration hearings for some individuals issued Notices to Appear.[33] At the same time, the agency does not quantify the asserted administrative savings from eliminating the grace period.[34]

This imbalance matters. DHS identifies plausible burdens for workers, families, employers, and other government components, but relies on qualitative assertions of administrative simplicity and program integrity.[35] A reasoned analysis should test the

---

[29] *See* 91 Fed. Reg. at 57,819–20.
[30] 91 Fed. Reg. at 57,821–22 (Table 4, Dependents of Primary E-1, E-2, E-3, H-1B, H-1B1, L-1, O-1 and TN Beneficiaries) (five-year average and fiscal-year totals); id. at 57,822 (noting data do not provide a reliable estimate of dependents who used the grace period).
[31] *See* 91 Fed. Reg. at 57,821 (Family Assessment).
[32] 91 Fed. Reg. at 57,820–22 (using revocation after petitioner withdrawal as a proxy, estimating 3,795 annual new petitions within 60 days, and identifying data limitations).
[33] 91 Fed. Reg. at 57,823.
[34] *See* 91 Fed. Reg. at 57,817–18, Table 2.
[35] *See* 91 Fed. Reg. at 57,823–24.

available proxy data, compare costs against savings, assess alternatives, and explain why full elimination is necessary. The NPRM has not yet done so.

Conclusion and Recommendation

The Chamber respectfully urges DHS to withdraw the proposed rule. The grace period is a practical, limited, and important feature of the employment-based immigration system. It supports orderly transitions, helps American employers recruit needed talent, promotes worker mobility, and reduces unnecessary disruption for families and businesses. If DHS declines to withdraw the rule, the Chamber urges the agency to consider the foregoing less burdensome and disruptive alternatives.

The Chamber and its members stand ready to work with DHS to promote program integrity while preserving the flexibility American businesses need to compete in a global economy. We appreciate the opportunity to comment and respectfully request that DHS give these comments full consideration.

Respectfully submitted,



Patrick Shen
Vice President, Immigration Policy
U.S. Chamber of Commerce