

IMMIGRATION ALERT: LONGER AUTO-EXTENSIONS FOR WORK-AUTHORIZED INDIVIDUALS

BEST PRACTICES TO MINIMIZE RISK OF FINES AND PENALTIES

On May 4, 2022, the Department of Homeland Security (DHS) U.S. Citizenship and Immigration Services (USCIS) announced a vast increase in the length of automatic extensions for certain renewal applicants. A [Temporary Final Rule](#) (TFR) has been published and provides details regarding the changes. Due to the negative impact of COVID-19, federal personnel shortages, and a major increase in Employment Authorization Document (EAD) applications, USCIS has been bogged-down with severe backlogs and delayed production of filing receipts and work permits.

The TFR allows certain EAD applicants an extra 360-days from the normal automatic 180-days of extended work authorization. That tripled timeframe provides qualified non-U.S. citizens with a total of 540 days beyond their current EAD expiration dates. For U.S. employers, the automatic extensions are an invaluable way to ensure for workforce consistency and operational continuity.

Our team has assisted multiple business entities with Form I-9 internal audits, HR staff training, complex completions and remediations of technical and substantive errors. Time and time again, we have identified instances of missed opportunities for employers to retain their employees due to a lack of awareness and best practices regarding EAD extensions and reverifications.

As a result, pay close attention to some very important points with the TFR:

- The 540-day auto-extensions will only be in effect through October 27, 2023. Thereafter, all applicants revert to the 180-day period.
- As usual, USCIS allows for only certain categories of work-authorized individuals to be eligible for auto-extensions. That list does not change very often, but employers should check from time-to-time at the following website: <https://www.uscis.gov/eadautoextend>.

We highly recommend the implementation of the following best practices by employers to ensure for the proper execution of extensions and reverifications of employment authorization. A strong employment eligibility verification program greatly minimizes the chances of fines and penalties by U.S. Immigration and Customs Enforcement (ICE) and the Department of Justice's Immigrant and Employee Rights (DOJ IER).

- Keep EAD expirations for all employees on a calendar to serve as reminders.
- Remind all EAD holders to apply for extended permission well in advance of card expirations.
- A USCIS extension application notice can only be accepted for auto-extension if the category code from the current EAD is identical to that listed on the presented receipt. Once exception is permitted for Temporary Protected Status (TPS) candidates (categories C19 and A12).
- All extension notices must reflect application receipt dates by USCIS that are equal to or before the expiration of the current EAD. If after, the receipt does not qualify for auto-extension.

Our team of I-9 compliance experts can assist your business in navigating the constantly changing rules and regulations that impact your I-9 compliance program. We stay up-to-date on the latest nuances of preparation and remediation processes and procedures through active and on-going engagements with small, medium, and large sized companies across the entire country. We are here to help you with any immigration compliance concerns, questions, or identified needs.



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John Shofi has more than 20 years of government experience in key leadership roles with the U.S. Department of Homeland Security (DHS), in-depth experience at Immigration and Customs Enforcement (ICE), and a widespread knowledge of DHS operations. He provides invaluable insight in matters involving investigative and compliance issues.