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Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Policy and Strategy
5900 Capital Gateway Drive
Camp Springs, MD 20746

RE: DHS Docket No. USCIS–2025–0004 Alien Registration Form and Evidence of Registration

Dear Office of the Principal Legal Advisor, Regulatory Affairs Unit:

MALDEF ("Mexican American Legal Defense and Educational Fund") submits this public comment in response to the Department of Homeland Security's ("DHS") Alien Registration Form and Evidence of Registration Final Rule and Request for Comment found at 91 Fed. Reg. 39248 ("RFC").[1]

The RFC seeks comment on several proposed changes, including: (1) removing the Form I-776 Employment Authorization Document ("EAD") from the evidence of registration list; (2) adding an incomplete set of forms to the registration form list to fill the gap created by the latter proposal; and (3) requiring individuals who have already registered, but not yet received evidence of registration, to effectively re-register via an alternative form to receive immediate evidence of registration.[2]

Given the significant reliance interests at stake, MALDEF encourages DHS to retain the EAD as proof of registration. In any event, for the reasons discussed below, DHS' proposal to remove the EAD from the evidence of registration list and only partially fill that gap by adding an incomplete set of forms to the registration form list is arbitrary and capricious in violation of the Administrative Procedure Act ("APA"). DHS also lacks the authority to compel a registered individual to re-register because DHS has failed to issue timely evidence of registration.

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[1] Alien Registration Form and Evidence of Registration, 91 Fed. Reg. 39248 (June 29, 2026) ("RFC").
[2] *Id.* at 39321-24.

I. Background

a. Current Regulations

8 U.S.C. § 1302(a) requires every noncitizen who is above the age of 14, remains in the United States for 30 days or longer, and has not been registered or fingerprinted, to apply for registration and be fingerprinted before expiration of that 30-day window.[3] For a form to constitute valid registration, it must contain inquiries into four categories of obligatory information and "such additional matters as may be prescribed."[4] Under 8 C.F.R. § 264.1(a), DHS has prescribed a list of nine forms that constitute valid registration.[5] If a noncitizen "willfully fails or refuses" entirely to apply for registration or be fingerprinted, or any parent or legal guardian willfully fails or refuses to do so for their dependent, they are guilty of a misdemeanor and subject to up to six months in prison, a fine not to exceed $5,000, or both.[6]

Upon registration, 8 U.S.C. § 1304(d) requires DHS to issue noncitizens a "certificate of alien registration or alien registration receipt card."[7] If any noncitizen over the age of 18 fails to carry their certificate of registration or registration receipt card with them, subsection (e) dictates they are guilty of a misdemeanor and subject to not more than 30 days in prison, a $5,000 fine, or both.[8] Under 8 C.F.R. § 264.1(b), DHS has prescribed a larger list of 14 forms that constitute "evidence of registration[.]"[9] Although its regulations are unclear, it appears to take the position that the section 264.1(b) list of forms that constitutes "evidence of registration" meets the "certificate of registration or registration receipt" card carry-requirement for purposes of section 1304(e).[10]

b. Proposed Changes

The RFC states that DHS is considering adding 12 new forms to the 8 C.F.R. § 264.1(a) list of registration documents.[11] Its proposed list includes, among other forms, Petitions for U Nonimmigrant Status, Applications for T Nonimmigrant Status, and Applications for Asylum and Withholding of Removal.[12] It does not, however, propose including I-360 VAWA Petitions, I-821D DACA Applications, or the I-765 Application for Employment Authorization.[13]

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[3] 8 U.S.C. § 1302(a).
[4] *Id.* at § 1304(a).
[5] 8 C.F.R. § 264.1(a).
[6] 8 U.S.C. § 1306(a); 18 U.S.C. §§ 3571(b)(6), 3559(a)(7).
[7] 8 U.S.C. § 1304(d).
[8] *Id.* at § 1304(e); 18 U.S.C. §§ 3571(b)(6), 3559(a)(8).
[9] 8 C.F.R. § 264.1(b).
[10] *See Alien Registration Requirement*, U.S. CITIZENSHIP & IMMIGR. SERVS., https://www.uscis.gov/alienregistration (asserting that an individual who does not "carry evidence of registration" is subject to a criminal penalty consistent with that of 8 U.S.C. §1304(e)) (last visited Aug. 10, 2026).
[11] RFC at 39321.
[12] *Id.*
[13] *See id.*

DHS acknowledges that many of the forms it proposes adding to 8 C.F.R. § 264.1(a) do not currently meet the section 1302 and 1304 biometric and information collection requirements for registration.[14] To meet these requirements, DHS recognizes it "would have to take additional actions," including amending the information collected by these forms in accordance with the Paperwork Reduction Act ("PRA").[15]

DHS also proposes two important changes to the list of forms constituting evidence of registration in section 264.1(b). First, it proposes adding several categories of noncitizens for whom the Form I-94 constitutes evidence of registration: noncitizens granted asylum under 8 U.S.C. § 1158; extensions of stay or changes of status under 8 U.S.C. § 1258; U Visa holders; and T Visa holders.[16]

Second, the RFC proposes removing the Form I-766 EAD from the list in section 264.1(b).[17] The RFC explains that the first employment authorization form DHS (then INS) placed on the 264.1(b) list was the Form I-688A Employment Authorization Card ("EAC").[18] EACs were issued only after the noncitizen "had submitted their application, completed an initial interview, and provided their biometrics."[19] The INS eventually phased out the EAC in favor of the "more secure" EAD.[20] However, since this change, INS and DHS have expanded the categories of noncitizens eligible for EADs, and the RFC asserts that several of these categories do not necessarily provided their biometrics or the requisite registration information.[21] As a result, DHS ultimately landed on its proposal to remove the EAD from section 264.1(b).

The RFC states that DHS considered several alternatives, including limiting the class of noncitizens for whom the EAD can serve as evidence of registration to those who have submitted section 264.1(a) compliant forms.[22] It did not explain why it apparently rejected this proposal.[23] It also considered prescribing all forms that lead to the issuance of an EAD, including the Form I-765, as registration forms.[24] DHS appears to have rejected this proposal because it would require "significant additions to DHS forms, and a significant increase in the number of aliens required to provide biometrics."[25] It, moreover, concluded that millions of noncitizens who are already registered or not required to register would have to submit some of these forms annually and would face redundant information collection and biometric requirements.[26]

The RFC then addresses the gap between when noncitizens register via a benefits request and when they eventually receive evidence of registration.[27] In an effort to close this gap, DHS is actively considering several proposals: (1) creating a new general form that would serve as evidence of registration to be

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[14] *Id.*
[15] *Id.*
[16] *Id.* at 39323.
[17] *Id.* at 39321-22.
[18] *Id.* at 39322.
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.* at 39322-23.
[23] *Id.* at 39323.
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.*at 39323-24.

delivered electronically or through the mail whenever a noncitizen submits a form prescribed under section 264.1(a); (2) modifying the G-235R registration form and requiring individuals who have registered via benefits applications but have not yet received evidence of registration to effectively re-register via this form; and (3) designating certain USCIS-issued notices related to section 264.1(a) compliant registration forms as evidence of registration.[28]

II. Analysis

a. The Proposed List of Additions to 8 C.F.R. § 264.1(a) and Removal of EADs from the 8 C.F.R. § 264.1(b) Evidence of Registration List Are Arbitrary and Capricious

The APA prohibits agencies from taking action that is "arbitrary" and "capricious."[29] This standard "'requires agencies to engage in reasoned decisionmaking"' and "to reasonably explain to reviewing courts the bases for the actions they take and the conclusions they reach."[30] The agency, therefore, must "examine the relevant data and articulate a satisfactory explanation for its actions including a rational connection between the facts found and the choice made."[31] An agency acts arbitrarily and capriciously when it "has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."[32] The proposals in the RFC violate the APA for several reasons.

First, DHS has arbitrarily excluded forms from its proposed additions to section 264.1(a). The RFC offers no principle or reason that distinguishes the forms it includes from those it omits. The RFC does not explain, for example, why it proposes adding U and T Visa applications to section 264.1(a), but not VAWA I-360 petitions, despite all of them serving similar humanitarian purposes for victims of violence, trafficking, and crime.[33] Nor does it explain why it proposes adding the I-821 TPS application, but not the I-821D DACA form, despite the latter satisfying the requirements of subsection (a) at least as well.[34] In any event, as the RFC acknowledges, most of the forms it proposes adding to subsection (a) will require updating consistent with the PRA.[35] Even assuming the I-821D needs updating to be added to subsection (a), it would require fewer modifications than the majority of the forms DHS has proposed adding to section 264.1(a).[36] If DHS proceeds with its cherry-picked list of additions to subsection (a) to only

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[28] *Id.*
[29] 5 U.S.C. § 706(2)(A).
[30] *Bhd. of Locomotive Eng'rs & Trainmen v. Fed. R.R. Admin.*, 972 F.3d 83, 115 (D.C. Cir. 2020) (quoting *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 16 (2020)).
[31] *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).
[32] *Id.*
[33] RFC at 39321.
[34] *Compare* U.S. CITIZENSHIP & IMMIGR. SERVS., Form I-821, Application for Temporary Protected Status, https://www.uscis.gov/sites/default/files/document/forms/i-821d.pdf (last visited Aug. 12, 2026), *with* U.S. CITIZENSHIP & IMMIGR. SERVS., Form I-821D, Consideration of Deferred Action for Childhood Arrivals, https://www.uscis.gov/i-821d (last visited Aug. 12, 2026).
[35] *Id.*
[36] *Compare, e.g.*, U.S. CITIZENSHIP & IMMIGR. SERVS., Form I-821D, Consideration of Deferred Action for Childhood Arrivals, https://www.uscis.gov/sites/default/files/document/forms/i-821d.pdf (last visited Aug. 12, 2026), *with* U.S. CITIZENSHIP & IMMIGR. SERVS., Form I-730, Refugee/Asylee Relative Petition, https://www.uscis.gov/sites/default/files/document/forms/i-730.pdf (last visited Aug. 12, 2026), *and* U.S. CITIZENSHIP &

partially fill the gap it will create by removing the EAD from subsection (b), it must provide an articulable reason for its decision to omit forms like the I-821D and the I-360. The failure to do so violates the APA.

Second, DHS' proposed addition of the U and T Visa applications to the subsection (a) list fails to consider important confidentiality concerns. Under 8 U.S.C. § 1367(a)(2), DHS is prohibited from using or disclosing to anyone other "(than a sworn officer or employee of the Department, or bureau or agency thereof, for legitimate Department, bureau, or agency purposes) … any information which relates to" a noncitizen who is beneficiary of a U or T Visa application for relief, or VAWA beneficiary.[37] Under section 1304(b), however, all photographs and fingerprints collected as part of the registration process "shall be made available to Federal, State, and local law enforcement agencies, upon request."[38] Section 1304(b), moreover, allows the DHS Secretary to share all registration and fingerprint records "to such persons or agencies" as he or she may designate.[39] While this comment does not argue that DHS cannot add the U or T Visa application to the subsection (a) list of registration forms, DHS must make clear that the confidentiality provision governing these applications remains only section 1367(a)(2), not section 1304(b). The failure to consider this important aspect of the problem violates the APA.

Third, DHS' decision to remove the EAD from section 264.1(b) and add an inadequate list of forms to section 264.1(a) fails to adequately consider alternatives. For example, DHS states that it considered, but appears to have rejected, allowing noncitizens who have filed section 264.1(a) compliant forms to continue using their EADs as proof of registration.[40] But the RFC provides no explanation at all as to why it rejected this proposal.[41]

Last, the RFC fails to adequately consider the reliance interests affected by removing the EAD from section 264.1(b) while simultaneously declining to add all the forms that permit a noncitizen to obtain an EAD to the section 264.1(a) registration form list. For decades, noncitizens and practitioners have relied on the regulatory structure in which the EAD provided noncitizens evidence of registration under section 264.1(b). By eliminating the EAD from section 264.1(b) without including all EAD-eligibility-providing forms in section 264.1(a), DHS will create registration gaps and impose new procedural hurdles for noncitizens who have long relied on the existing framework. EAD holders who have long understood themselves to be registered and carrying proof of registration will wake up one day to the imminent threat of having neither.

The reliance interests at stake are particularly serious, given DHS' apparent position that once an individual has been issued section 264.1(b) evidence of registration, they must carry it on their person at all times or be subject to a strict liability criminal penalty of up to a $5,000 fine, 30 days' imprisonment, or both.[42] Because noncitizens have long relied on EADs as evidence of registration, it will take time for this rule change to permeate the immigrant community. During that time, many will violate this strict liability criminal statute out of confusion, or because they did not know or become aware of this rule

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IMMIGR. SERVS., Form I-102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document, https://www.uscis.gov/sites/default/files/document/forms/i-102.pdf (last visited Aug. 12, 2026).

[37] 8 U.S.C. § 1367(a)(2).

[38] *Id.* at § 1304(b).

[39] *Id.*

[40] *See* RFC at 39322-23.

[41] *See id.*

[42] *See Alien Registration Requirements*, *supra* note 10.

change. Allowing EADs issued before the date this proposal goes into effect to remain evidence of registration, as the RFC suggests it will, is not enough, because many individuals registered under the proposed rule will remain subject to criminal liability due to a reasonable but mistaken assumption, based on years of reliance, that their new EAD continues to constitute proof of registration.[43] If DHS wishes to remove the EAD from section 264.1(b), prescribing all forms that can lead to an EAD as section 264.1(a) registration forms would resolve this issue and adequately reflect these considerable reliance interests.

On top of failing to adequately consider the reliance interests at stake in rejecting this proposal, the RFC's justifications for doing so do not stand up to scrutiny. DHS rejects adding all EAD-eligibility-providing forms to section 264.1(a) because doing so would require "significant additions to DHS forms, and a significant increase in the number of noncitizens required to provide biometrics."[44] But this concern is arbitrary, as DHS is simultaneously unbothered by the significant additions to DHS forms and increased biometric collection it acknowledges its section 264.1(a) proposal requires.[45] Administrative costs, moreover, do not excuse an agency from considering reliance interests or from adopting a coherent regulatory structure.[46]

DHS also asserts that designating all EAD-eligibility-providing forms as registration documents might require redundant registration and biometric collection.[47] But DHS can easily avoid redundant information and biometric collection by only requiring noncitizens to provide those registration requirements the first time they file the section 264.1(a) form. By inadequately weighing the considerable reliance interests at stake, and providing justifications for rejecting this alternative proposal that do not withstand scrutiny, the RFC violates the APA.

b. DHS Lacks the Authority to Compel an Already Registered Individual to Re-Register Due to DHS' Failure to Issue Evidence of Registration

The RFC expresses concern over the time-gap between when some individuals are formally registered via a section 264.1(a) compliant benefits application and when those individuals eventually receive proof of registration.[48] Two of its active proposals to resolve this issue are reasonable: (1) creating a new general form that serves as evidence of registration that would be delivered electronically or through the mail whenever a noncitizen submits a section 264.1(a) compliant registration form; or (2) designating certain USCIS notices related to section 264.1(a) compliant benefits applications as registration forms.[49] DHS, however, lacks the authority to implement its third active proposal, requiring a registered noncitizen without evidence of registration to re-register via a modified G-235R. Section 1302(a) imposes a registration obligation upon certain noncitizens.[50] Once individuals are registered, DHS "shall issue a certificate of alien registration or an alien registration receipt card."[51] In other words, once an individual

[43] *Id.* at 39322.
[44] *Id.* at 39323.
[45] *Id.* at 39321.
[46] *See Judulang v. Holder*, 565 U.S. 42, 63-64 (2011) (asserting that cheapness alone cannot save an otherwise arbitrary policy).
[47] RFC at 39323.
[48] *Id.* at 39323-24.
[49] *Id.*
[50] 8 U.S.C. § 1302(a).
[51] *Id.* at § 1304(d).

is registered, DHS has a nondiscretionary duty to issue a certificate of registration or a registration receipt card. DHS cannot require an individual to re-register, merely because it has failed to undertake its nondiscretionary obligation in a timely fashion. DHS must accordingly reject this alternative.

III. Conclusion

DHS should continue to allow EADs to serve as proof of registration. If not, it should prescribe all forms that allow noncitizens to apply for an EAD as registration documents. Last, DHS cannot require noncitizens to re-register, merely because DHS has failed to provide evidence of registration in a timely fashion.

Please feel free to contact us with any questions or concerns about these comments at (202) 559-1823 or jcalo@maldef.org.

Thank you.

Sincerely,

Jesse Calo
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