

## DHS Withdraws Proposed Rule to Rescind H-4 Work Authorization Program

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On January 25, 2021, the U.S. Department of Homeland Security (DHS) [withdrew](#) its proposed rule that sought to eliminate the H-4 employment authorization document (EAD) program for eligible spouses of H-1B workers. The now-withdrawn rule, "[Removing H-4 Dependent Spouses from the Class of Aliens Eligible for Employment Authorization](#)," was proposed and submitted to the Office of Information and Regulatory Affairs (OIRA) on February 20, 2019, largely in response to President Trump's [Buy American and Hire American Executive Order](#), which had emphasized the former administration's focus on protecting American workers. At the time of its withdrawal, the proposed rule was under review by OIRA.

The Obama administration implemented the [H-4 EAD program](#) through the rulemaking process in 2015. The resulting final rule, entitled "[Employment Authorization for Certain H-4 Dependent Spouses](#)," permits eligible H-4 spouses to engage in employment in the United States if the primary H-1B visa holder has reached certain milestones in the green card process. The rule was intended to allow families who were pursuing green card status—which can take years to obtain—to secure a second source of income while awaiting the approval of their U.S. permanent residency applications. At the time that the final rule was published, DHS estimated that "as many as 179,600 H-4 dependent spouses [would be] eligible to apply for employment authorization during the first year of [the rule's] implementation" and "[a]s many as 55,000 H-4 dependents [would] be eligible to apply for employment authorization each year after the first year of implementation."

In addition to withdrawing the proposed rule that would have eliminated the H-4 EAD program, the Biden administration has indicated that it may expand the H-4 EAD program to include other dependents in H-4 status. A provision to this end was included in the [U.S. Citizenship Act of 2021](#), proposed legislation that President Biden sent to Congress for consideration on January 20, 2021.

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