

## FAQ: New Guidance on Renewals for Labor-Based Deferred Action

On January 17, 2024, the Department of Homeland Security (DHS) [announced new guidance](#) on how immigrant workers involved in labor disputes can request renewals of prior grants of deferred action. This guidance supplements DHS's [January 2023 guidance](#) that created a streamlined process for DHS to consider workers' requests for deferred action on a case-by-case basis where their employers are involved in a labor dispute with a federal, state, or local labor agency. The renewals process largely mirrors the process for initial requests, which poses both opportunities and challenges for workers seeking to renew their immigration protections as they exercise their labor rights against abusive employers. To ensure this process remains a useful tool for strengthening labor standards enforcement, both the labor agencies and DHS must implement this renewal process in a way that is efficient and accessible to all eligible workers.

### Where can I find the new guidance?

In addition to the DHS [press release](#), additional [guidance on renewals](#) comes in the form of updated language and new FAQs on the DHS website's existing page on labor-based deferred action. Specifically, Questions 14-17 address the renewal process and new language has been added to the sections "Process for Workers Requesting Deferred Action" and "For Labor Agencies Submitting Statements of Interest" (Section B).

### What will workers need to apply for renewals of labor-based deferred action?

Similar to the initial process, workers will need to obtain an "updated" Statement of Interest (SOI) from a labor agency showing a "continued need" for prosecutorial discretion *before* requesting renewal of deferred action and work authorization from DHS. Further, workers will need to submit the same types of forms and supporting documents as they previously filed with DHS in their initial deferred action requests.

### What is an "updated" SOI for the purpose of renewals of deferred action?

An "updated" SOI must affirm a labor agency's "continued need" for workers to assist in the investigation or prosecution of an employer, or in the enforcement of any court order or settlement agreement. Specifically, the labor agency must reassess the scope of workers in need of continued protection based on the labor agency's ongoing enforcement interest. DHS will defer to the labor agency's interest and will make case-by-case determinations of deferred action for workers who fall within the scope of the updated SOI.

### How can a labor agency update an SOI?

DHS has made clear that labor agencies can satisfy the requirements for an updated SOI by revising the original SOI to address the continued need to protect workers. Labor agencies do not need to draft a new SOI for renewal purposes and a short cover letter or addendum affirming the ongoing enforcement interests in the original SOI may suffice. Labor agencies should make clear in bolded language at the top of the letter that it is an updated SOI for the purposes of supporting subsequent requests for labor-based deferred action.

### Can renewals of deferred action be available to all workers at a worksite?

Yes, and the availability of worksite-wide renewals is a significant win for workers in the new guidance. Because DHS has indicated that it will defer to the labor agencies' enforcement needs, it will be up to them to define the scope of workers they support in the updated SOI. Accordingly, it will be important for workers to advocate for labor agencies to define their enforcement interests expansively to include all workers in the initial SOI, and potentially others.

### Are there any changes to the DHS filing requirements?

Not specifically. However, as before, the instructions require submitting documentation of a worker's "immigration history or status," which at the renewal stage should include copies of the prior approval notices of deferred action and work authorization. Further, there is new language in the renewal guidance stating that supporting evidence may include "the worker's past participation or willingness to actively participate in the labor agency investigation." This language suggests that participation in the labor dispute—or at least a willingness to participate in it—may be weighed more heavily at the renewal stage.

### **Can workers just re-file their initial deferred action request packet with the updated SOI?**

Unfortunately, no. Workers will need to update and resubmit Forms [G-325A](#) and [I-765](#) with any information that has changed.<sup>1</sup> Similarly, workers may need to revise their statement to reflect that they fall within the scope of the updated SOI, and/or to add any other relevant intervening facts. While other supporting documents from the initial request may be re-filed “as-is,” ideally workers should be screened by an experienced immigration practitioner about any intervening circumstances that warrant changes or supplemental evidence (for example, participation in the labor dispute or recent criminal history).

### **When and where should renewals be filed?**

As with the initial labor-based deferred action process, renewal requests are filed at a centralized USCIS intake point in Montclair, CA. The new guidance recommends filing renewal requests 120 days (4 months) prior to the expiration of the original period to avoid lapses in deferred action and employment authorization. However, DHS will consider applications for renewal even where the prior grant has expired.

### **When should workers request updated SOIs?**

Given that workers must first obtain updated SOIs from the labor agency that issued the initial one, workers and advocates should submit those requests *before* the DHS-recommended 120 days for filing renewal requests. Labor agencies vary widely in processing times for issuing SOIs– advocates can check with others who have requested SOIs from the same agency as to current SOI turnaround times.<sup>2</sup>

### **What is the cost of requesting a renewal?**

Like the initial request for deferred action, there is no filing fee specifically for requesting a renewal. However, since workers will also need to reapply for work authorization using Form [I-765](#), they will need to pay the associated filing fee of \$410 or submit a fee waiver by filing Form [I-912](#).

### **Is there a limit to the number of renewals a worker may receive?**

No. DHS has not limited the number of renewals a worker can receive so long as there is an ongoing labor agency interest, meaning that it is possible for a worker to receive deferred action for longer than four years (the two-year initial grant plus a two-year renewal). Further, DHS has indicated it would consider longer initial grants of deferred action, so advocates may consider requesting labor agencies support longer grants of deferred action in the initial SOI.

### **Will renewals run from the date of approval or from the date of expiration of the prior grant of deferred action?**

Assuming a renewal is approved before the initial grant of deferred action has expired, the renewal will run from the date of the expiration of the initial grant. This means that even if a worker’s renewal is approved before the expiration of their prior grant, they will still receive a full 2 years from their initial approval and another full two years from their renewal.

### **Where can I find more information about the labor-based deferred action process generally?**

NILC has published a comprehensive [FAQ](#) that addresses all aspects of the labor-based deferred action process, as well as an [anniversary report](#) on the first year of the new process. NILC, the National Immigration Project of the National Lawyers’ Guild (NIPNLG), Unemployed Workers United, and the Tulane Immigrants’ Rights Clinic also co-authored a [practice manual for immigration practitioners](#), while NILC, Arriba Las Vegas, the National Employment Law Project (NELP), and Jobs with Justice co-authored a [guide for worker advocates](#).

If you have additional questions, please contact NILC at [daforworkers@nilc.org](mailto:daforworkers@nilc.org).

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<sup>1</sup> Please note there is a new version of Form G-325A as of October 2023 (linked above).

<sup>2</sup> In particular, USDOL has had significant delays issuing initial SOIs, though officials have acknowledged the problem and have endeavored to issue them within 30 days going forward. Nonetheless, advocates should consider filing requests for updated SOIs with USDOL as early as possible to avoid potential delays in filing with DHS.