



## BFD Notices - Recent Trend Survey

February 9, 2024

In December 2023, ASISTA member practitioners reported receiving an influx of BFD notifications for cases filed in all years, including very recently.<sup>1</sup> Although pleased with earlier BFD decisions in many cases, practitioners also noted that they had not received EADs following the BFD notification in the usual timeframe. This prompted ASISTA to circulate a survey seeking more information about the patterns that members were seeing with regard to newly issued BFDs. **We are sharing the survey results back to the list so that members can see current patterns, and will update our members when USCIS provides more information about their current BFD processes.**

### **About the survey:**

In the survey, ASISTA collected information regarding the timing of BFDs and EADs before and after the December influx for both principals and derivatives. ASISTA also solicited questions from members regarding the patterns of BFD issuance by USCIS. We received 52 responses to the survey, providing a snapshot of recent BFD trends reported by members. Note that the survey requested information about trends as well as individual experiences, so some respondents answered both that they *have* received EADs for recently issued BFDs, and also that they *have not* received EADs within a month of the BFD.<sup>2</sup>

Most of the questions submitted through the survey involved what order USCIS is now processing BFDs:

*What is happening and what can we expect regarding issuance of BFD based on filing date?*

*Will USCIS now accept inquiries/expedite requests for BFD adjudications re: those I-918s filed after Oct 2017?*

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<sup>1</sup> Among other things, practitioners reported receiving BFD notices on Form I-797, rather than in letter format. When asked by ASISTA, USCIS quickly clarified that the BFD notices issued on I-797s were legitimate.

<sup>2</sup> Survey respondents were able to complete the form multiple times, but were also invited to indicate the most common answer for each question to represent the trend in their offices.

Other questions/comments involved the delay in receipt of EADs following BFDs:

*I received EAD approval notice, social security card but no EAD card in various cases. One month and still waiting. I did email the hotline and await response.*

Members also voiced concerns about when they could expect derivative BFDs and EADs following receipt of principal BFDs. **Prior to the December influx, survey respondents reported that they received derivative BFDs within a month or less of the principal BFD.** Currently, many are still waiting for derivative BFDs related to the December influx of principal BFDs.

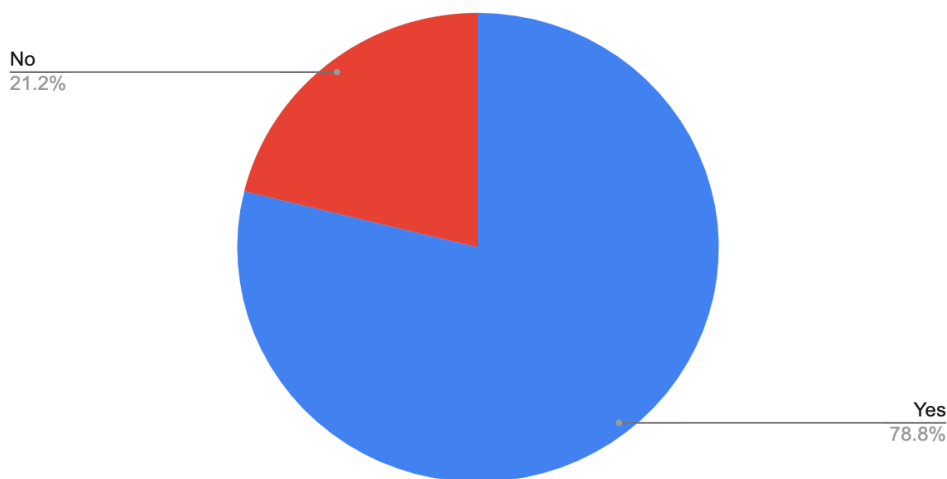
Finally, practitioners voiced concerns about the impact of delayed derivative BFD notifications on clients and their families:

*Many immigrant survivors with pending I-918s are currently suffering high levels of stress as a result of feeling that their I-918s might have been "lost" or are otherwise faulty in some way given the long delays and their inability to inquire, despite many others who filed years after them already having obtained their BFDs/EADs.*

### **Survey results:**

**Receipt of EADs following Principal BFDs:** Prior to the influx, 84.6% of respondents typically received EADs within two weeks of the BFD. The survey showed that after the influx, **most respondents (78.8%) received EADs associated with principal BFDs by the date of the survey**, but there had been a general slowdown of EAD issuance following receipt of BFDs for both principals and derivatives.

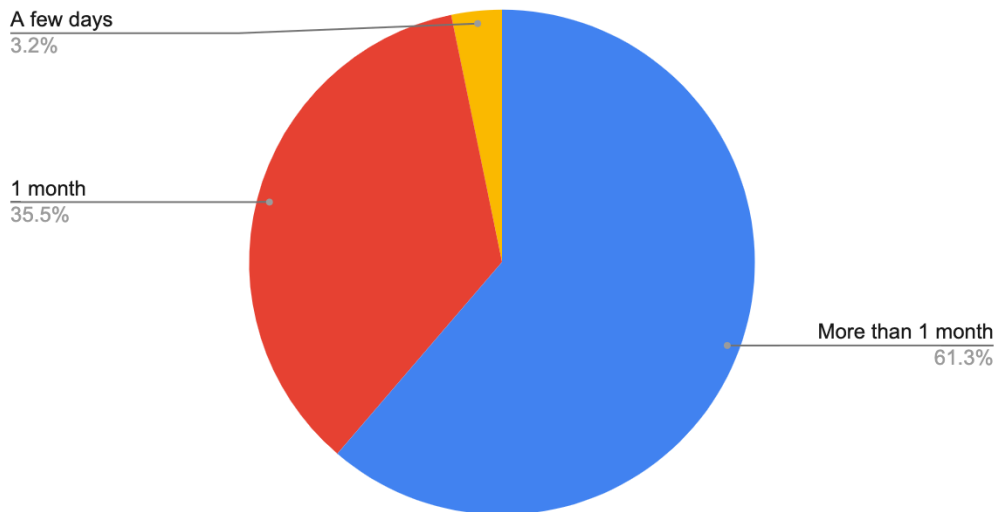
If you have received a BFD since December, have you received an EAD yet (for an already filed I-765)?



In addition, **31 respondents reported at least one instance of *not* receiving an EAD for a recently approved BFD by the date of the survey.** Of the respondents who

**did not receive an EAD by the date of the survey, 61.3% had been waiting more than one month** since issuance of the BFD. Again, note that the survey invited respondents to indicate the most common answer for each question to represent the trend in their offices, so some respondents answered both that they have received some EADs for recently issued BFDs within a month, and also that they have waited longer than a month for some EADs.

If you have NOT received an EAD for a BFD issued since December, how long has it been since the BFD was issued?



**Receipt of Derivative BFDs following issuance of Principal BFDs:** Most respondents said that, prior to the influx, they received derivative BFDs and EADs within a month of principal BFDs, with 48.8% receiving them within two weeks of principal BFD issuance.

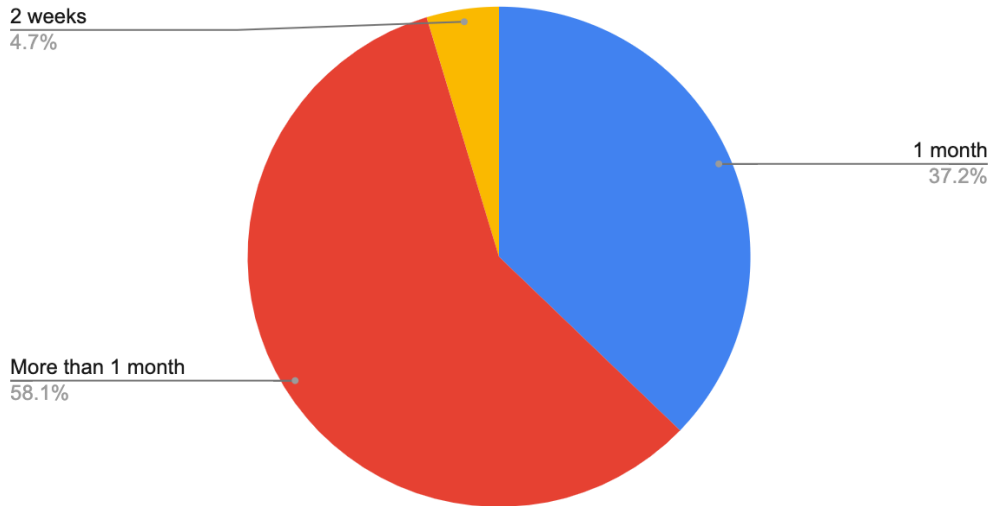
However, **a majority of respondents said that they were still waiting for derivative BFDs** following receipt of principal BFDs during the influx, more than a month after the start of the influx [see image on the next page].<sup>3</sup>

In other words, you are definitely not imagining things!

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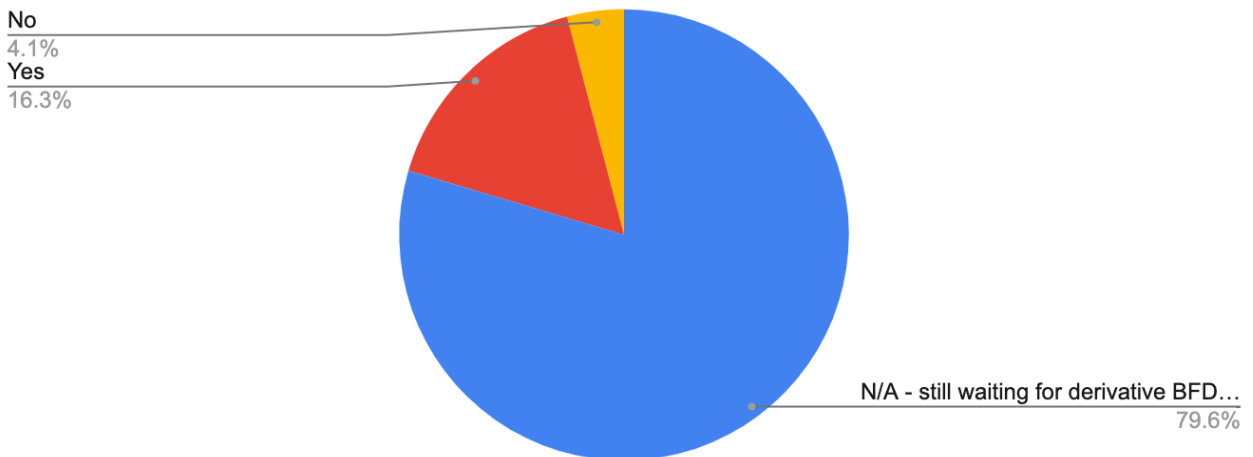
<sup>3</sup> Remember that derivatives are considered separately for BFDs. The USCIS Practice Manual states that “[a] qualifying family member is not guaranteed a BFD EAD solely because the principal petitioner receives a BFD.” Following the issuance of a principal BFD, USCIS will “evaluate whether the petitioner has properly filed a complete [form I-918A],” “the petition includes credible evidence of the qualifying family relationship,” and review the “results of the qualifying family member’s background and security checks based upon biometrics.” 3 USCIS-PM A.2. The [USCIS BFD FAQ](#) states that “[t]he principal petitioner must be issued employment authorization ... before the petition for any qualifying family member may receive a [BFD].” On August 11, 2023, [USCIS clarified](#) that, even if the principal has not yet filed an I-765, USCIS may issue BFDs to derivatives once the principal petitioner receives a BFD. 3 USCIS-PM 5.C. We will seek an explanation from USCIS for the delays in both principal EAD issuance and derivative BFD and EAD delays, and ask USCIS to confirm that it will proceed to derivative BFD evaluation as soon as the principal’s BFD is issued.

DERIVATIVES: If you have received a principal BFD but NOT a derivative BFD, how long has it been since the principal BFD was issued?



The survey also showed a similar pattern of EAD delay following issuance of the derivative BFD.

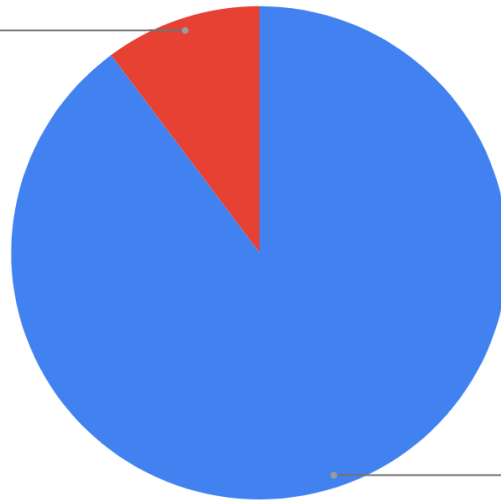
Since the recent influx of BFDs, are you seeing the same pattern of delays between BFD and EAD issuance for derivatives as with principals?



**Deferred Action Notices:** Finally, 5 respondents had received separate Deferred Action notices following receipt of BFDs on I-797 notices. It is currently unclear if these were merely multiple BFD notices (issued both on I-797s and in letter format), or if USCIS expects to issue separate Deferred Action notices in all cases where Deferred Action is granted. The language on the BFD I-797 notices does not definitively indicate that the same notice confers Deferred Action, and ASISTA will seek additional clarity from USCIS at the same time that we submit questions about the recent influx.

Has anyone received a separate notice of Deferred Action following issuance of the BFD notice?

Yes  
10.2%



No  
89.8%

There were many more questions and comments that came in through the survey (as well as through attendee input during our recent January 25, 2024 webinar) that didn't make it into this report back, but that we will use to inquire with USCIS about current BFD policies. Thanks for sharing your input!

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Established in 2008, ASISTA is a national leader in the movement for safety and justice for immigrant survivors of gender-based violence. ASISTA's founders helped write the immigration provisions of the federal Violence Against Women Act (VAWA) and Victims of Trafficking and Violence Prevention Act (TVPA), affording legal status to hundreds of thousands of survivors and their children since 1994. With over 2500 members nationwide, ASISTA's work is focused on 1) providing expert case consultation, training, and resources to attorneys and advocates navigating the complex immigration system on behalf of survivors of gender-based violence, including intervening in specific cases as needed; 2) pushing for federal, state and local policies that ensure safety and justice for immigrant survivors; and 3) coordinating lawsuits to prevent the government from unfairly deporting survivors of violence. To learn more about ASISTA's work, click [here](#).