



U.S. GOVERNMENT ACCOUNTABILITY OFFICE

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May 17, 2022

The Honorable Richard J. Durbin
Chairman
The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
United States Senate

The Honorable Jerrold Nadler
Chairman
The Honorable Jim Jordan
Ranking Member
Committee on the Judiciary
House of Representatives

Subject: *Department of Homeland Security: Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Homeland Security (DHS) entitled "Temporary Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Renewal Applicants" (RIN: 1615-AC78). We received the rule on May 4, 2022. It was published in the *Federal Register* as a temporary final rule with request for comments on May 4, 2022. 87 Fed. Reg. 26614. This temporary final rule is effective May 4, 2022, through October 15, 2025.

According to DHS, the temporary final rule amends existing regulations to provide that the automatic extension period applicable to expiring Employment Authorization Documents (Forms I-766 or EADs) for certain renewal applicants who have filed Form I-765, Application for Employment Authorization, will be increased from up to 180 days to up to 540 days from the expiration date stated on their EADs. DHS stated this increase will be available to eligible renewal applicants with pending Forms I-765 as of May 4, 2022, including those applicants whose employment authorization may have lapsed following the initial 180-day extension period, and any eligible applicant who files a renewal Form I-765 during the 540-day period beginning on or after May 4, 2022, and ending October 26, 2023. In light of current processing times for Forms I-765, DHS stated it is taking these steps to help prevent renewal applicants from experiencing a lapse in employment authorization and/or documentation while their applications remain pending and solutions are implemented to return processing times to normal levels.

The Congressional Review Act (CRA) requires a 60-day delay in effective date of a major rule from the date of publication in the *Federal Register* or receipt of the rule by Congress,

whichever is later. 5 U.S.C. § 801(a)(3)(A). The 60-day delay in effective date can be waived, however, if the agency finds for good cause that delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued. 5 U.S.C. § 808(2). DHS determined it had good cause to waive the 60-day delay because delay would be impracticable due to the need to prevent renewal applicants, otherwise eligible for the up to 180-day automatic extension, from experiencing the immediate harm caused by gaps in employment authorization and/or documentation, which would in turn cause imminent harm to their U.S. employers and their ability to maintain their workforce, while DHS works to reduce adjudicatory processing times and otherwise address the Form I-765 backlogs through various measures.

Enclosed is our assessment of DHS's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.



Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy & Strategy, USCIS
Department of Homeland Security

ENCLOSURE

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HOMELAND SECURITY
ENTITLED
"TEMPORARY INCREASE OF THE AUTOMATIC EXTENSION PERIOD
OF EMPLOYMENT AUTHORIZATION AND DOCUMENTATION
FOR CERTAIN RENEWAL APPLICANTS"
(RIN: 1615-AC78)

(i) Cost-benefit analysis

The Department of Homeland Security (DHS) estimated the temporary final rule will result in cost savings to businesses. DHS gave a primary estimate of \$3,089,900,000 in cost savings at the seven percent discount rate and \$3,053,000,000 in cost savings at the three percent discount rate. DHS stated the temporary final rule would also prevent lost wages for affected employees as well as prevent lost employment tax revenue for the government. DHS gave a primary estimate of the protected wages to be \$856,700,000 at the seven percent discount rate and \$846,500,000 at three percent discount rate. DHS gave a primary estimate of the protected tax revenue to be \$90,400,000 at the seven percent discount rate and \$89,300,000 at the three percent discount rate.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

DHS determined the temporary final rule is not subject to RFA. DHS stated the temporary final rule is not subject to the requirements of RFA because the temporary final rule was not subject to notice and comment.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

DHS stated the temporary final rule does not contain a mandate as defined by the Act. Also, DHS stated the temporary final rule is not subject to the requirements of the Act because it was not subject to notice and comment procedures.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

DHS waived notice and comment procedures for good cause. DHS determined it had good cause because delay would be impracticable due to the need to prevent renewal applicants, otherwise eligible for the up to 180-day automatic extension, from experiencing the immediate harm caused by gaps in employment authorization and/or documentation, which would in turn cause imminent harm to their U.S. employers and their ability to maintain their workforce, while DHS works to reduce adjudicatory processing times and otherwise address the Form I-765 backlogs through various measures.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

DHS stated the temporary final rule contains no information collection requirements subject to PRA.

Statutory authorization for the rule

DHS promulgated the temporary final rule pursuant to sections 1101, 1103, 1324a of title 8; and section 1806 of title 48, United States Code, as well as Public Law 101-410, as amended by Public Law 114-74.

Executive Order No. 12866 (Regulatory Planning and Review)

DHS stated the Office of Information and Regulatory Affairs determined the temporary final rule is economically significant.

Executive Order No. 13132 (Federalism)

DHS determined the temporary final rule does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. On this basis, DHS found insufficient federalism implications to warrant preparation of a federalism summary impact statement.