



441 G St. N.W.
Washington, DC 20548

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January 3, 2025

Committee on the Judiciary
United States Senate

Committee on the Judiciary
House of Representatives

Subject: *Department of Homeland Security, U.S. Citizenship and Immigration Services:
Increase of the Automatic Extension Period of Employment Authorization and
Documentation for Certain Employment Authorization Document 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, U.S. Citizenship and Immigration Services (DHS) entitled “Increase of the Automatic Extension Period of Employment Authorization and Documentation for Certain Employment Authorization Document Renewal Applicants” (RIN: 1615-AC78). We received the rule on December 13, 2024. It was published in the *Federal Register* on December 13, 2024. 89 Fed. Reg. 101208. The stated effective date of the rule is January 13, 2025.

According to DHS, this rule permanently increases the automatic extension period for expiring employment authorization and/or Employment Authorization Documents (Forms I-766 or EADs) for certain renewal applicants who have timely filed Form I-765, Application for Employment Authorization, from up to 180 days to up to 540 days. DHS states that the rule finalizes a recent temporary rule and makes the increase permanent to help prevent eligible renewal EAD applicants from experiencing a lapse in employment authorization and/or the validity of their EAD as a result of lengthy processing times.

The Congressional Review Act (CRA) requires a 60-day delay in the 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 rule was published in the *Federal Register* on December 13, 2024. 89 Fed. Reg. 101208. The House of Representatives received the rule on December 13, 2024. 170 Cong. Rec. H7414 (daily ed. Dec. 20, 2024). The Senate received the rule on December 19, 2024. 170 Cong. Rec. S7323 (daily ed. Dec. 20, 2024). The rule has a stated effective date of January 13, 2025. Therefore, the stated effective date is less than 60 days from the date of receipt of the rule by Congress.¹

¹ DHS stated in the rule that, in accordance with section 808(2) of title 5, it found for good cause that the 60-day delay is unnecessary. 89 Fed. Reg. at 101265. Section 808(2) states that a rule may take effect at such time as the agency determines if the agency finds for good cause that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, and the agency incorporates the finding and a brief statement of its reasons in the rule. 5 U.S.C. § 808(2). Because DHS did not make a finding that notice and public procedure were impracticable, unnecessary, or contrary to the public interest, this provision does not apply.

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 Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

A handwritten signature in black ink, reading "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Samantha Deshommes
Chief Regulatory Officer
U.S. Citizenship and Immigration Services

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

(i) Cost-benefit analysis

The Department of Homeland Security, U.S. Citizenship and Immigration Services (DHS) prepared an analysis of the costs and benefits for this rule. 89 Fed. Reg. 101208, 101210, 101244–65 (Dec. 13, 2024). DHS examined the benefits of two temporary final rules, issued in 2022 and 2024, that temporarily increased the automatic extension period up to 540 days, and estimated that from fiscal year (FY) 2023 to FY 2027, these rules result in average stabilization of earnings worth \$10.0 billion to employment-authorized noncitizens and average cost savings of \$3.5 billion to U.S. employers from avoided labor turnover and are expected to yield an average \$1.1 billion in employment tax transfer payments using a 2 percent discount rate. *Id.* at 101210. DHS stated that it was unable to forecast with certainty the potential future impacts of the rule’s permanent change to the automatic extension period. *Id.* at 101245.

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

DHS stated that no regulatory flexibility analysis is required for this rule because DHS did not issue a notice of proposed rulemaking for this action. 89 Fed. Reg. 101208, 101265. DHS also certified that the rule will not have a significant economic impact on a substantial number of small entities. *Id.*

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

DHS stated that the Act’s requirements do not apply to this rule because DHS did not publish a notice of proposed rulemaking for the rule. 89 Fed. Reg. 101208, 101265. DHS also determined that the rule will not have an effect on state, local, or tribal governments, in the aggregate, or on the private sector, of \$100 million in 1995 dollars, updated annually for inflation, in any one year. *Id.*

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the

Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act's exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act's requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act" in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

In its submission to us, DHS indicated the Act is not applicable to this rule.

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

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

On April 8, 2024, DHS published a temporary final rule requesting comment on both that rule and options for long-term solutions, including whether to make the temporary final rule permanent or modify its provisions. 89 Fed. Reg. 24628. DHS stated that they received comments from various interested parties. 89 Fed. Reg. 101208, 101225. DHS responded to comments in the rule. *Id.* at 101225–42.

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

DHS determined that this rule contains no information collection requirements under the Act. 89 Fed. Reg. 101208, 101266.

Statutory authorization for the rule

DHS promulgated this rule pursuant to sections 111(b)(1)(F) and 112 of title 6, and sections 1103(a), 1158(d)(2), 1184, 1254a(a)(1)(B), and 1324a(b), (h)(3)(B) of title 8, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

DHS stated that this rule is significant under the Order and was submitted to OMB for review. 89 Fed. Reg. 101208, 101244.

Executive Order No. 13132 (Federalism)

DHS determined that this rule does not have federalism implications. 89 Fed. Reg. 101208, 101265–66.