

Congress of the United States
Washington, DC 20515

October 6, 2020

The Honorable Chad F. Wolf
Acting Secretary
Department of Homeland Security
Washington, D.C. 20528

The Honorable Tony H. Pham
Senior Official Performing the Duties of the Director
U.S. Immigration and Customs Enforcement
500 12th Street, SW
Washington, D.C. 20536

Re: Notice of Proposed Rulemaking: Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives of Foreign Information Media

Dear Acting Secretary Wolf and Senior Official Pham:

We write to request that the Department of Homeland Security (DHS) and U.S. Immigration and Customs Enforcement (ICE) immediately extend the 30-day comment period for the above-referenced proposed rule and provide the public with at least 60 days to meaningfully participate in the rulemaking process. Due to the complexity and economic significance of this rule, anything less than a 60-day comment period cannot be justified.

On September 25, 2020, ICE published this proposed rule which would, *inter alia*, end the decades-long practice of admitting students, exchange visitors, and journalists to the United States for the period of time that they are in compliance with the terms and conditions of their nonimmigrant visa category.¹ The proposed rule would impact roughly 2 million individuals, in addition to imposing new burdens on U.S. institutions of higher education, research institutions, and media outlets.² Despite its length, complexity and wide-reaching impact, ICE has provided no justification for providing only 30 days for public comment.

The Administrative Procedure Act (APA) requires agencies to “afford interested persons an opportunity to participate in the rule making.”³ This has been interpreted to require a “reasonable and meaningful” opportunity for comment.⁴ Consistent with the APA, Executive Orders 12866 and 13563 instruct agencies to generally provide a 60-day comment period for most proposed rules, including those deemed “significant.”⁵ ICE acknowledges that the proposed rule has been designated as “economically

¹ Dep’t of Homeland Security, *Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives of Foreign Information Media*, 85 Fed. Reg. 60526 (Sep. 25, 2020).

² *Id.*

³ 5 U.S.C. § 553(c).

⁴ *See, e.g., Forester v. CPSC*, 559 F.2d 774, 787 (D.C. Cir. 1977).

⁵ Executive Order 12866, *Regulatory Planning and Review*, 58 Fed. Reg. 51735 (Oct. 4, 1993), [reginfo.gov/public/jsp/Utilities/EO_Redirect.myjsp](https://www.reginfo.gov/public/jsp/Utilities/EO_Redirect.myjsp); Executive Order 13563, *Improving Regulation and Regulatory Review*, 76 Fed. Reg. 3821 (Jan. 21, 2011), https://www.reginfo.gov/public/jsp/Utilities/EO_13563.pdf.

significant,” thus requiring review by the Office of Management and Budget and warranting a 60-day comment period as suggested by Executive Order 12866.⁶ For complex rulemakings, many agencies provide even longer periods, such as 90 days or more for the public to meaningfully participate.⁷

The regulations governing the admission of nonimmigrant students have been revisited numerous times since 1978 when the concept of “duration of status” was first introduced.⁸ In the 1978 notice of proposed rulemaking and the three such notices that followed in 1981, 1983, and 1987, a 60-day public comment period was provided either initially or by extension.⁹ The economic impact of F nonimmigrant students on our country has only grown since these rulemakings—estimates indicate that F-1 students alone contributed \$44.7 billion to the U.S. economy in 2018.¹⁰

Further, the impact of this rulemaking extends beyond such students to make sweeping changes for other nonimmigrants, including J-1 academic researchers, scholars, and physicians whom U.S. research institutions and hospitals rely upon in our response to the COVID-19 pandemic.¹¹ To demand that the public review, analyze, and provide meaningful comments within 30 days on a regulation that will significantly alter the longstanding policy for admission of these nonimmigrants and have a significant economic impact is simply unreasonable.

As such, we respectfully request that ICE extend the comment period to *a minimum of 60 days* and immediately notify the public of such extension. To do otherwise violates the spirit and intent of the APA. We further ask that you respond to this request no later than Tuesday, October 6, 2020.

Sincerely,



JERROLD NADLER
Chairman
Committee on the Judiciary



ZOE LOFGREN
Chair
Subcommittee on Immigration and
Citizenship



ROBERT C. “BOBBY” SCOTT
Chairman
Committee on Education and Labor



BENNIE G. THOMPSON
Chair
Committee on Homeland Security

⁶ 85 Fed. Reg. at 60560.

⁷ See, e.g., Dep’t of Homeland Security, *EB-5 Immigrant Investor Program Modernization*, 82 Fed. Reg. 4738 (Jan. 13, 2017) (90-day comment period); Food and Drug Administration, *Sunscreen Drug Products for Over-the-Counter Human Use*, 84 Fed. Reg. 6204 (Feb. 26, 2019) (90-day comment period); see also Office of the Federal Register, *A Guide to the Rulemaking Process* (Jan. 2011) (recommending a 180-day comment period for complex rulemakings).

⁸ 43 Fed. Reg. 54618 (Nov. 22, 1978).

⁹ 46 Fed. Reg. 7267 (Jan. 23, 1981); 48 Fed. Reg. 14575 (Apr. 5, 1983); 52 Fed. Reg. 13223 (Apr. 22, 1987).

¹⁰ See 85 Fed. Reg. at 60522; *Open Doors Report: International Students Contribute 44.7 Billion to the United States*, INST. FOR INT’L EDUC. (Nov. 18, 2019), <https://studyinthestates.dhs.gov/2019/11/open-doors-report-international-students-contribute-447-billion-us>.

¹¹ Presidential Proclamation 10014, *Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak*, 85 Fed. Reg. 23441 (Apr. 22, 2020), <https://www.federalregister.gov/documents/2020/04/27/2020-09068/suspension-of-entry-of-immigrants-who-present-a-risk-to-the-united-states-labor-market-during-the> (exempting such individuals from the suspension of entry during COVID-19).



KATHLEEN RICE

Chairwoman

Subcommittee on Border Security,
Facilitation, and Operations

cc: The Honorable Jim Jordan, Ranking Member, Committee on the Judiciary
The Honorable Ken Buck, Ranking Member, Subcommittee on Immigration and
Citizenship
The Honorable Virginia Foxx, Ranking Member, Committee on Education and Labor
The Honorable Mike Rogers, Ranking Member, Committee on Homeland Security
The Honorable Clay Higgins, Ranking Member, Subcommittee on Border Security,
Facilitation, and Operations
Kenneth T. (Ken) Cuccinelli, Senior Official Performing the Duties of the Director, U.S.
Citizenship and Immigration Services
Joseph Edlow, Deputy Director for Policy, U.S. Citizenship and Immigration Services