



March 18, 2020

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Russell T. Vought
Acting Director
U.S. Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

Re: Extension of Public Comments Amid COVID-19 Pandemic

Dear Acting Director Vought:

We, the undersigned, are Board, Member Scholars, and staff with the Center for Progressive Reform (CPR), a nonprofit research and educational organization working to protect health, safety, and the environment through analysis and commentary. We write now to call upon you to require all executive branch agencies to hold open all active comment periods for their pending rulemakings as long as President Donald Trump's March 13, 2020 Declaration of a National Emergency concerning the COVID-19 pandemic remains in effect. We also call upon you to recommend that any independent agencies similarly hold open their active comment periods for their pending rulemakings. Furthermore, all affected comment periods should be extended for a reasonable period after the March 13, 2020 Declaration of a National Emergency concerning the COVID-19 pandemic has been lifted, which in no case should be less than 30 days. If an agency elects to commence a public comment period while the Declaration of National Emergency remains in effect, that period should be similarly be held open.

During this period, the normal Administrative Procedure Act (APA) exceptions from the notice-and-comment process for emergency rulemakings should still apply where appropriate (especially with regard to regulatory measures meant to address the COVID-19 pandemic). In addition, agencies should still proceed expeditiously on a pending rulemaking if it is subject to a legal deadline or whenever the agency deems that a delay would result in harm to public health or safety.

As you are aware, public participation is a central hallmark of the U.S. regulatory system, and the notice and comment process has become

the primary vehicle by which the public has been afforded an opportunity to make their views on new rulemakings known to agency decision-makers. Indeed, Section 553 of the APA enshrines this process by requiring agencies to “give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments.” Without this opportunity for public participation, we risk lower-quality rules as well as a rulemaking process that lacks sufficient public accountability and legitimacy.

The arrival of the COVID-19 pandemic, however, threatens to deprive members of the public of this opportunity to meaningfully participate in open rulemakings. Increasingly, a wide range of stakeholders in these rulemakings – such as businesses and civil society organizations – are being forced to close their doors to protect their workers against the risk of exposure to COVID-19. As such, their ability to continue to monitor open rulemakings and develop useful comments for agency decision-makers is being hindered, if not blocked outright. Holding open active public comment periods until these stakeholders are able to resume normal operations will ensure that they are able to meaningfully participate in those rulemakings consistent with the letter and spirit of the APA.

Holding open active comment public comment periods will benefit federal agencies, as well. It will ensure they are able to gather better public feedback on their active rulemakings, leading to better substantive outcomes. Likewise, it will reduce the need for public servants to work in agency offices where they would be unnecessarily exposed to COVID-19.

This blanket approach to holding open public comment periods is especially important in the case of rulemakings for which an agency expects to, or should in the public interest, conduct public hearings in conjunction with the notice-and-comment process. It goes without saying that such public hearings should be postponed until pandemic conditions have cleared. Such postponements would only make sense, however, if the accompanying public comment period likewise remains open.

The arrival of the COVID-19 pandemic in the United States requires that we all do our part to protect ourselves and our fellow citizens against unnecessary risks of exposure to this deadly disease. As Acting Director of the Office of Management and Budget (OMB), you can do your part by ensuring that our opportunities for participatory governance remain properly balanced against the critical demands we now face to protect public health.

We appreciate your attention to these requests.

Sincerely,

William Andreen

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