

Submitted via regulations.gov

October 31, 2019

Edward J. Ramotowski, Deputy Assistant Secretary
Department of State, Bureau of Consular Affairs
600 19th St NW
Washington, D.C. 20006

Department of State Desk Officer
Office of Management and Budget, Office of Information and Regulatory Affairs
725 17th Street, NW
Washington, D.C. 20503

**RE: Public Comments on Agency Information Collection Activities; Proposals,
Submissions, and Approvals: Immigrant Health Insurance Coverage,
Docket No. DOS-2019-0039**

Dear Mr. Ramotowski and OIRA DOS Desk Officer:

The Catholic Legal Immigration Network, Inc. (CLINIC) submits these comments in response to the Department of State's (DOS's) proposed Information Collection entitled "Immigrant Health Insurance Coverage," posted October 30, 2019. CLINIC opposes the collection of information regarding immigrant health insurance, and the use of emergency Paperwork Reduction Act (PRA) review to enact this change, resulting in only a two-day public commenting period.

CLINIC supports a national network of community-based legal immigration services programs that primarily serve low-income immigrants and regularly advise and assist individuals in filing family-based immigration applications, naturalization applications, humanitarian forms of relief, and more. This network includes over 370 programs operating in 49 states and the District of Columbia. As a faith-based organization, we have consistently stood by the principle that all immigrants deserve an immigration system that is fair and ensures due process for all. In this vein, CLINIC submits the following comments in opposition to the proposed information collection.

I. General Comments

CLINIC opposes the information collection for immigrant health insurance, the Presidential Proclamation that prompted its issuance, and the emergency PRA review used to seek clearance. The Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System, issued on October 4, 2019, would not reduce the burden on the healthcare system as it purports. It would only succeed in targeting low-income families to deny reunification, and reduce access to affordable health care for the immigrants who are admitted. Furthermore, this information collection is open for only two days of public

comments due to a purported “emergency” need for expedited clearance, and is not accompanied by a rulemaking under the Administrative Procedure Act (APA). CLINIC opposes the method for promulgating this new requirement, as it is not an emergency and the proposed changes are so profound that they require review not only under the PRA, but also under the APA with a full public comment process.

II. The Proposed Oral Examination Questions Violate the Proclamation

The Presidential Proclamation applies only to “aliens who will financially burden the United States healthcare system,” and it suspends their admission until they have been screened for possession or intended possession of health insurance. The proclamation does not apply to all immigrant visa applicants, but only those who the United States has an objective reason to believe will incur medical costs that will be borne by the government. The purpose of the proclamation is to prevent the admission of those who will incur “reasonably foreseeable medical costs.” If the applicant does not possess any existing medical condition, then it is not possible to calculate future medical costs. There is nothing on which to base such a calculation.

The proclamation also designates certain groups of immigrant visa applicants who are specifically exempted from the proclamation; those immigrant visa applicants will not be screened even if they do pose a health care concern. However, the designation of these groups does not diminish or affect the premise that the proclamation does not apply to immigrant applicants who do not possess any health care concerns.

The agency proposes to ask three questions of all immigrant visa applicants not specifically exempted, rather than limiting its questioning to those applicants who “will financially burden the United States healthcare system.” The agency should limit its questioning to applicants who have been identified by a designated panel physician, after an official medical examination, as suffering from a medical condition. This is now part of the immigrant visa process, and the results of this medical exam are submitted by the immigrant visa applicant in a sealed envelope on Form I-693, Report of Medical Exam and Vaccination Record. The consular officers should be limiting their health insurance screening to applicants identified as having a Class B certification or an existing medical condition that would warrant future medical care.

III. The Proposed Oral Examination Questions Are Arbitrary and Vague, and Leave Too Much Discretion to Consular Officials

According to the public announcement, consular officers will ask the following three questions of immigrant visa applicants:

- whether they will be covered by health insurance in the United States within 30 days of entry to the United States
- If yes: identify the specific health insurance plan, the date coverage will begin, and such other information related to the insurance plan as the consular officer deems necessary.
- If no: do you have financial resources to pay for reasonably foreseeable medical expenses (Reasonably foreseeable medical expenses are those expenses related to existing medical conditions, relating to health issues existing at the time of visa adjudication.)

The terms that DOS uses—"financial resources," "reasonably foreseeable medical expenses," and "existing medical conditions"—are too vague and ambiguous, and they will give too much discretion to consular officers.

Consular officers are provided no standards to determine what value and what type of financial resources will be considered adequate to pay for medical expenses. Must the applicant have to show cash in a bank account, or can he or she show other resources, such as stocks and bonds and funds in a retirement account? Do "financial resources" include assets that can be converted to cash in the United States within a reasonable amount of time, such as real estate, automobiles, and other significant property? How much money is it necessary to demonstrate? Would the amount of money depend on the potential medical expenses?

Consular officers are provided no standards to determine what are "reasonably foreseeable medical expenses." These officials have no medical background or expertise and thus are in no position to determine future medical costs of any specific health condition. That is the precise reason that determinations regarding health-related grounds of inadmissibility are made by panel physicians and not consular officials.

Consular officers are provided no standards to determine what is an "existing medical condition." Apart from information on the Form I-693, are consular officials now expected to perform their own physical exam and ask the applicant questions about any and all health conditions? Are only medical conditions that require treatment to be considered, or do those that are in remission or are treatable with over-the-counter medication also included?

Finally, what standards will be used to determine the ability and intention of the immigrant visa applicant to purchase medical insurance within 30 days of admission? If the applicant answers that question in the affirmative, what follow-up questions will the consular officer ask or what form of proof will be required?

Consular officials depend on interpretations of key legal terms and rely on the Foreign Affairs Manual (FAM) or other instructions. These instructions are noticeably lacking here. This will result in inconsistent decision-making and in officers applying their own definitions to these important words. The FAM requires the agency to notify visa applicants of what to expect at the consular interview. 9 FAM 302.8-2(B)(2). This proposed procedure would violate that fundamental principle.

IV. The Proposed Oral Examination Questions Improperly Limit Eligibility for Applicants with Financial Resources

DOS' proposed questions limit the ability of immigrant visa applicants to demonstrate adequate financial resources in lieu of medical insurance; that question is asked only to those who have an existing medical condition. However, the proclamation makes no such restriction.

Consular officers will ask the third question only to applicants who do not have a health insurance policy and will need to qualify for admission by demonstrating adequate financial resources. Yet the question applies only to those who have "financial resources to pay for reasonably foreseeable medical expenses (Reasonably foreseeable medical expenses are those

expenses related to existing medical conditions, relating to health issues existing at the time of visa adjudication.)”

But the proclamation states that: “An alien will financially burden the United States healthcare system unless the alien will be covered by approved health insurance, as defined in subsection (b) of this section, within 30 days of the alien’s entry into the United States, or unless the alien possesses the financial resources to pay for reasonably foreseeable medical costs.” While it is CLINIC’s position that the proclamation only applies to applicants who have an existing medical condition, if DOS is requiring *all* visa applicants except those specifically exempted to be screened for health insurance, then it should not limit the third category—financial resources in lieu of health insurance—to those who have an existing medical condition.

V. The Information Collection Is Not an Emergency, and Should be Subject to the APA

DOS has issued this information collection with only two days’ comment period, invoking the emergency exception under the PRA. In order to merit a rare emergency exception to the normal procedures under the PRA, an agency must demonstrate that delay of the information collection will result in likely public harm (such as the delivery of resources after a natural disaster) or missing a court-ordered or statutory deadline.¹ Collecting health insurance information does not comport with either requirement. There is no public harm that will result from a delay in collecting information about immigrant health insurance. As described above, the primary result will be to impede lawful immigration and increase the cost of health insurance for low-income families. The effective date of the Presidential Proclamation is November 3, 2019, however, it is not a statutory or court-ordered deadline, and the proclamation states that it “shall be implemented consistent with applicable law...”

The PRA is applicable law that requires two comment periods of 60 and 30 days respectively, with exceptions only rarely granted. The proclamation does not state any change in conditions that makes immigrant health insurance an emergent need this month more than it was last month, or that it cannot wait until after the full PRA comment period. The foregoing issues notwithstanding, an emergency clearance with only two days’ public comment period is an unreasonable amount of time to expect the public to learn about the information collection and draft a thoughtful response. DOS should not be granted emergency clearance, and should be required to undergo the full PRA clearance process.

Some of the requirements imposed by the proposed information collection are not appropriate for PRA review and must be cleared through the APA as a proposed rule. The notice goes beyond collecting information, and imposes requirements that would change the outcome of immigrant visa applications, and establishes definitions for terms. As described above, the information collection would have results inconsistent with the Presidential Proclamation. The information collection defines “reasonably foreseeable medical expense,” a term not otherwise defined in the proclamation or in regulation. The aspects of the information collection that would change

¹ Office of Management and Budget, “A Guide to the Paperwork Reduction Act,” available at <https://pra.digital.gov/clearance-types/>.

immigrant visa adjudication and have legal consequences for applicants are not appropriate for this proposed information collection.

VI. Conclusion

For the above stated reasons, CLINIC strongly opposes the proposed information collection and the proclamation on which it is based. The information collection will have the opposite effect that it purports to intend, and it is an improper use of both the emergency clearance process and of the PRA itself. We respectfully request that the information collection be withdrawn.

Thank you for the opportunity to submit these comments. We appreciate your consideration. Please do not hesitate to contact Jill Marie Bussey, Advocacy Director, at jbussey@cliniclegal.org should you have any questions about our comments or require further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Jill Marie Bussey". The signature is written in a cursive, flowing style.

Jill Marie Bussey, Esq.
Director of Advocacy
Catholic Legal Immigration Network, Inc.