



*Submitted via [www.regulations.gov](http://www.regulations.gov)*

December 19, 2019

Carl C. Risch, Assistant Secretary  
Bureau of Consular Affairs  
U.S. Department of State  
600 19th St NW  
Washington, D.C. 20006

**RE: Docket Number: DOS-2019-0037: Agency Information Collection Activities;  
Proposals, Submissions, and Approvals: Public Charge Questionnaire**

Dear Mr. Risch:

The Catholic Legal Immigration Network, Inc. (CLINIC) respectfully submits the following comments in connection with the Department of State's (DOS) Notice of Information Collection published in the Federal Register on October 24, 2019. CLINIC strongly opposes the proposed form in its entirety and, for the reasons set forth below, requests that it be withdrawn.

Embracing the Gospel value of welcoming the stranger, CLINIC promotes the dignity and protects the rights of immigrants in partnership with a dedicated network of immigration legal services programs. This network includes approximately 380 programs operating in 47 states, as well as Puerto Rico and the District of Columbia. CLINIC's network employs roughly 1,400 attorneys and accredited representatives who, in turn, serve hundreds of thousands of low-income immigrants each year. Over 90 percent of CLINIC's affiliates offer family-based immigration services, including assistance with applications for adjustment of status to lawful permanent residency.

CLINIC's attorneys conduct training and provide technical support on all the immigration-related legal problems faced by low-income immigrants. The Training and Legal Support Section focuses on family-based immigration issues, including the issues surrounding adjustment of status. By the end of the third quarter for 2019, CLINIC attorneys trained 4,035 people online and in person. Further, CLINIC's Religious Immigration Services (RIS) section specializes in assisting international religious workers and their U.S. organizational sponsors. RIS represents approximately 160 dioceses and religious communities throughout the U.S. and over 820 individual clients.

U.S. immigration policy reflects the importance of family reunification. Of the 1,183,505 foreign nationals admitted to the United States in FY2016 as lawful permanent residents (LPRs), 804,793, or 68 percent, were admitted based on family ties. Similarly, the sanctity of the family is a dominant element of Catholic social teaching and a high priority of the Catholic Church. Accordingly, CLINIC supports immigration policies and procedures that promote and facilitate family unity and welcomes changes to the adjustment of status process that assist families in obtaining this immigration benefit. Unfortunately, this proposed form is irreconcilable with our nation's values, as it would create unnecessary barriers to achieving the American Dream – a dream that was not intended to be limited to only the affluent. It is also contrary to our Catholic values and faith teachings, as it would negatively affect family unity, stability, and threaten public health.

Our values are best expressed by Pope John XXIII who wrote in *Pacem in Terris*, “Now among the rights of a human person there must be included that by which a man may enter a political community where he hopes he can more fittingly provide a future for himself and his dependents. Wherefore, as far as the common good rightly understood permits, it is the duty of that state to accept such immigrants and to help to integrate them into itself as new members.”

CLINIC opposes the Form DS-5540 for the following reasons:

- DOS bases the need for the form on the Interim Final Rule (IFR) that was modeled on a DHS public charge rule, but that rule has been enjoined indefinitely by Federal courts. Until the DHS public charge rule is implemented, DOS should not be moving to implement a parallel rule that would create different interpretations to the same ground of inadmissibility.
- DOS's IFR would bypass the legislative process required to change an established, 137-year-old definition of who is deemed a public charge
- DOS's IFR is contrary to legislative intent, case law, and the ordinary meaning of “public charge”
- DOS's IFR includes non-cash programs, which is contrary to public policy and would unnecessarily jeopardize public health, safety, and family stability
- DOS's IFR is counterproductive and would create tremendous burdens on the agency, legal representatives, and immigrants, and
- The proposed DS-5540 is poorly drafted and does not even track the language in the IFR.

The proposed Form DS-5540 would impose a substantial burden on individuals and families seeking to immigrate to the United States, as well as on foreign service nationals and consular staff tasked with reading and interpreting various answers to the questions. In most cases, these DOS officials have neither the expertise nor the necessary information to make meaningful decisions based on the information in the form.

CLINIC submitted detailed comments in response to the Department’s Interim Final Rule (IFR) on Ineligibility Based on Public Charge Grounds published on October 11, 2019.<sup>1</sup> We pointed out that the DHS final rule was enjoined by five federal courts on that same day.<sup>2</sup> Three of these courts issued nationwide injunctions, while two courts issued regional or state-specific injunctions. Similarly, the President’s Health Insurance Proclamation of October 4, 2019, barring admission of immigrants who cannot verify health insurance or the resources to purchase it was enjoined by a District Court in Portland, Oregon, on November 2, 2019.<sup>3</sup> While the federal government will surely appeal those decisions, it will take months for those appeals to result in final decisions. Ultimately, the issue of the legality of the DHS final rule and the President’s proclamation will be resolved by the Supreme Court; at the earliest that will be in the Court’s term beginning in September 2020. We will not repeat those arguments and comments we made in response to the DOS IFR. In the comments that follow, we respond only to the proposed form itself.

## **I. Specific Comments on the Form DS-5540**

### **Part 1**

The DS-5540 is to be completed by the immigrant visa applicant, who has already completed a DS-260. Therefore, it should not ask for information already disclosed on the immigrant visa application. Question #2 and #3 ask for information contained in the DS-260, as well as on the underlying approved petition. CLINIC recommends that these be deleted as unnecessary.

### **Part 2**

Question #4A asks if the applicant, who is not currently covered by health insurance in the United States, will be covered by health insurance in the United States within 30 days of admission. This question does not relate to the DOS IFR but rather to the Presidential Proclamation on Health Care. Yet that Proclamation requires immigrant visa applicants to state that they either have such insurance, will obtain it within 30 days of admission as an immigrant, “or have the financial resources to pay for reasonably foreseeable medical costs.” So, applicants who check the “No” box in Question #4A should then be allowed to indicate compliance with the Proclamation through the financial resources option. But there is no equivalent question or space where they would indicate that election. If the applicant checks the “Yes” box, then they are allowed to identify the health insurance plan. But if they check “No,” the implication is that they will be denied an immigrant visa. CLINIC recommend adding a line below #4A that says: “If you answered no to Item A, indicate the financial resources you will use to pay for reasonably foreseeable medical costs.”

If the applicant answered “Yes” to question #4A, the line below asks the applicant to identify the specific health insurance plan and the date coverage will begin. Again, this question does not

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<sup>1</sup> Letter from Catholic Legal Immigration Network, Inc. to the Department of State (Nov. 12, 2019), available at <https://cliniclegal.org/resources/federal-administrative-advocacy/clinic-submits-comment-opposing-state-departments-interim>.

<sup>2</sup> See e.g., *Mayor and City Council of Baltimore v. United States Department of Homeland Security*, 19 Civ. 2851 (PJM)(D. Md.); *Casa De Maryland. v. Trump*, 19 Civ. 2715 (PWG)(D. Md.); *City and County of San Francisco v. US. Citizenship and Immigration Services*, 19 Civ. 4717 (PJH) (N.D. Cal.); *La Clinica De La Raza v. Trump*, 19 Civ. 4980 (PJH) (N.D. Cal.); and *Cook County, Illinois v. McAleenan*, 19 Civ. 6334 (GF) (N.D. Ill.).

<sup>3</sup> *John Doe #1 v. Donald Trump*, Case No. 3:19-cv-1743-SI (D.C. Ore 2019).

relate to the DOS IFR but rather the Presidential Proclamation on Health Care. It is impractical if not impossible for an immigrant applicant not residing in the United States to obtain compatible health insurance. In order to apply, the person would need to demonstrate that he or she is lawfully present in a particular state. It is not possible to apply for health insurance from outside the United States while also applying for an immigrant visa. In fact, it is also not possible to purchase health insurance in one state while residing in another state. The laws in this area are enormously complex. For example, Proclamation-compliant Short-Term Limited Duration Insurance (STLDI) plans are prohibited and illegal under New York and California state law. Other states allow STLDI plans but they do not comply with the Proclamation. Consular officers would need to know how to navigate the intricacies of 49 state insurance markets and verify the rules and products. In short, the question in the line below #4A is meaningless because it cannot be answered. CLINIC recommends striking it in its entirety.

### Part 3

**Question #5** asks the applicant to calculate his or her “expected” household size. It then states that “Household size anyone physically residing with you.” This statement is not in compliance with the IFR. Household size is defined in Section 40.41(d) as follows:

(d) *Alien's household.* For purposes of public charge ineligibility determinations under INA 212(a)(4):

(1) If the alien is 21 years of age or older, or under the age of 21 and married, the alien's household includes:

(i) The alien;

(ii) The alien's spouse, if physically residing or intending to physically reside with the alien in the United States;

(iii) The alien's children, as defined in INA 101(b)(1), if physically residing or intending to physically reside with the alien in the United States;

(iv) The alien's other children, as defined in INA 101(b)(1), not physically residing or not intending to physically reside with the alien for whom the alien provides or is required to provide at least 50 percent of financial support, as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided by the alien;

(v) Any other individuals (including a spouse not physically residing or intending to physically reside with the alien) to whom the alien provides, or is required to provide, at least 50 percent of the individual's financial support or who are listed as dependents on the alien's United States federal income tax return; and

(vi) Any individual who provides to the alien at least 50 percent of the alien's financial support, or who lists the alien as a dependent on his or her federal income tax return.

(2) If the alien is a child as defined in INA 101(b)(1), the alien's household includes the following individuals:

- (i) The alien;
- (ii) The alien's children as defined in INA 101(b)(1), physically residing or intending to physically reside with the alien in the United States;
- (iii) The alien's other children as defined in INA 101(b)(1) not physically residing or intending to physically reside with the alien for whom the alien provides or is required to provide at least 50 percent of the children's financial support, as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided by the alien;
- (iv) The alien's parents, legal guardians, or any other individual providing or required to provide at least 50 percent of the alien's financial support to the alien as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided to the alien;
- (v) The alien's parents' or legal guardians' other children as defined in INA 101(b)(1), physically residing or intending to physically reside with the alien in the United States;
- (vi) The alien's parents' or legal guardians' other children as defined in INA 101(b)(1), not physically residing or intending to physically reside with the alien for whom the parent or legal guardian provides or is required to provide at least 50 percent of the other children's financial support, as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided by the parents or legal guardians; and
- (vii) Any other individual to whom the alien's parents or legal guardians provide, or are required to provide at least 50 percent of each individual's financial support, or who is listed as a dependent on the parent's or legal guardian's federal income tax return.

CLINIC recommends that the DOS delete the phrase “anyone physically residing with you” and that the applicant be referred to the regulation or the Instructions for a complete and accurate definition of household size.

**Question #5** asks the applicant to indicate the household member’s “Current Job.” That information is not relevant to household size and should be deleted.

**Question #5** asks the applicant to indicate whether the household member is “on active duty, other than training, in the U.S. Armed Forces or Ready Reserve.” There are only two places in the IFR where the issue of membership in the Armed Forces is relevant. The first is if the applicant is a member, in which case the household income requirement is only 100 percent instead of 125 percent of the Federal Poverty Guidelines. But #5 asks about whether the household member—not the applicant—is a member of the Armed Forces. The second place is when the IFR is defining “public benefit.” An applicant is likely to become a public charge if he or she “receives one or more public benefits, as defined in paragraph (c) of this section, for more

than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months' worth of benefits)." An applicant is not considered to have received a public benefit if he or she is "Enlisted in the U.S. Armed Forces under the authority of 10 U.S.C. 504(b)(1)(B) or 10 U.S.C. 504(b)(2), or (ii) Serving in active duty or in the Ready Reserve component of the U.S. Armed Forces." Therefore, whether the household member—as opposed to the applicant—is a member of the Armed Forces is irrelevant. CLINIC recommends that this question be deleted.

#### **Part 4**

This section asks for information regarding the applicant's "assets, resources, and financial status."

**Question #6** requires the applicant to list all U.S. federal tax returns he or she filed within the last three years. The first column asks for the federal tax year. The second column asks: Did you file a Federal tax return? This question is unnecessary, since the applicant is only filling in this information if he or she filed a tax return for a given year. If they didn't file a tax return, they would have nothing to list for any given year. CLINIC recommends that DOS delete this question.

**Question #6** also asks for gross income and specifies that it must be listed in U.S. dollars. Income reported on federal tax returns is only listed in U.S. dollars, so this parenthetical is unnecessary.

**Question #7** asks if the applicant worked in the United States "in the last three years but not file a U.S. tax return." It provides only two options: "yes" or "no." But the question is complex. How is the applicant to answer the question if he or she worked for three years and filed a tax return for only two of those years? CLINIC recommends that the agency allow the applicant to indicate for each of the last three years whether he or she worked and whether he or she filed a tax return for that specific year.

**Question #8** asks for "income." Yet #8A asks for "current salary." There is no indication whether the applicant is supposed to list hourly wage, weekly salary, monthly salary, or annual salary. #8B asks for "annual salary." One of the measures for likelihood of becoming a public charge, according to the IFR, is the applicant's "annual gross income." CLINIC recommends that the DS-550 ask for this as opposed to "salary."

**Question #10** asks for the applicant to list his or her "liabilities and/or debts." It is unclear what this means. The IFR does not define or explain what this term means. CLINIC recommends that the agency provide some explanation so that the applicant can understand if it is limited to car loans, mortgages, and other bank loans, or if it includes credit card monthly statements.

**Question #11** asks whether the applicant has "requested or received public benefits." But in the follow-up questions, it does not ask if any request for public benefits was ever granted. CLINIC recommends that the agency include a question so that the applicant can indicate the outcome of the request. This question also asks for the "Reason For Requesting or Receiving This Benefit." This question does not seek relevant information and should be deleted.

**Question #12** asks if the applicant is likely to receive public benefits in the future. CLINIC supports the inclusion of this question.

## **Part 5**

**Question #15** asks for the applicant's occupational skills. This derives from the IFR where it asks for consideration of the applicant's "history of employment, educational level (high school diploma, or its equivalent, or higher educational degree), any occupational skills, certifications or licenses..." Yet while #15A-C ask the applicant to list any occupational skills, it then asks only for dates that licenses were obtained, who issued them, the license number, and the date or expiration or renewal. Occupational skills are not limited to licenses. CLINIC recommends that the agency allow the applicant to list the skill and describe what it consists of, when and how it was obtained, and whether it is used for his or her employment.

## **Part 6**

This section asks whether a "translator" assisted in the completion of the DS-5540. A translator is someone who interprets written text while an interpreter deals with oral statements. CLINIC recommends that DOS use the term "interpreter" as opposed to "translator," since most applicants who do not communicate in English will be using the skills of an interpreter to complete the form.

## **II. Conclusion**

For the reasons described above, CLINIC strongly opposes the proposed form in its entirety and, for the reasons set forth above, requests that it be withdrawn.

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

Sincerely,



Anna Gallagher  
Executive Director