

## **EXHIBIT 24**



AMERICAN  
IMMIGRATION  
LAWYERS  
ASSOCIATION

October 31, 2019

Ms. Megan Herndon  
Bureau of Consular Affairs, Office of Visa Services  
Department of State

State Desk Officer  
Office of Information and Regulatory Affairs  
Office of Management and Budget

**Submitted via email:**

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**Docket ID No. DOS-2019-0039**

**Re: Notice of Information Collection Under OMB Emergency Review: Immigrant Health Insurance Coverage; Form DS-5541**

Dear Ms. Herndon and State Desk Officer:

The American Immigration Lawyers Association (AILA) respectfully submits the following comments in response to the above-referenced notice and request for comments on the Notice of Information Collection Under OMB Emergency Review for the Immigrant Health Insurance Coverage (DS-5541) published in the Federal Register on Wednesday, October 30, 2019.<sup>1</sup>

AILA is a voluntary bar association of more than 15,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. Our mission includes the advancement of the law pertaining to immigration and nationality and the facilitation of justice in the field. AILA members regularly advise and represent businesses, U.S. citizens, lawful permanent residents, and foreign nationals regarding the application and interpretation of U.S. immigration laws. We believe that our members' collective expertise and experience make us particularly well-qualified to offer views that will benefit the public and the government as it relates to Form DS-5541.

**Introduction**

At the outset, AILA notes that it is significantly concerned by the less than 48 hour comment period provided to the public to review and respond to the Notice of Information Collection related

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<sup>1</sup> 84 Fed. Reg. 58199 (Oct. 30, 2019).

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to Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System (“PP 9945”).<sup>2</sup> Such a small window for notice and comment fails to provide a meaningful opportunity for public input.

On October 4, 2019, PP 9945 was issued to suspend the entry into the United States of certain individuals as immigrants who will “financially burden the United States healthcare system.” An individual, with certain exceptions, will not be granted an immigrant visa unless he can demonstrate to the satisfaction of a consular officer that he will be covered by an approved health insurance within 30 days of entry into the United States or that he possess the financial resources to pay for reasonably foreseeable medical costs. The President has arbitrarily decided that PP 9945 should take effect on Sunday, November 3, 2019 and orders the Secretary of State to establish standards and procedures to make such determinations.

### **Emergency Clearance for this Information Collection Request (ICR) Should Not be Granted**

As Paperwork Reduction Act Guide published, an ICR must undergo a 60-Day and 30-Day Notice for public comment.<sup>3</sup> Emergency approvals of ICRs, without appropriate public notice and comment opportunity, should only be granted in rare instances and only when certain legal criteria have been met. Specifically, the Paperwork Reduction Act Guide states that “such requests are discouraged by OMB”. Section 3.8.3 of this Guide states that an emergency clearance request would only be appropriate when an agency needs to begin collecting the information sooner than the full clearance time will allow and that the agency must demonstrate:

- (1) The collection of information must be needed prior to the expiration of the normal time periods; *and*
- (2) The collection of information is essential to the mission of the agency.  
(Emphasis added).

In addition to establishing these two criteria, the agency *must demonstrate* the existence of one of the following four circumstances:

- (1) Public harm is likely if normal procedures are followed; or
- (2) An unanticipated event has occurred; or
- (3) The use of normal procedures is likely to prevent or disrupt the collection; or
- (4) The use of normal procedures is likely to cause a statutory or court ordered deadline to be missed.<sup>4</sup>

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<sup>2</sup> 84 Fed. Reg. 53991 (Oct. 4, 2019)

<sup>3</sup> U.S. Office of Personnel Management, *Paperwork Reduction Act (PRA) Guide, Version 2.0* (April 2011) at p. 9.

<sup>4</sup> *Id.* at p. 11.

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Although the DOS argues that emergency approval of the ICR is warranted because consular officers must be prepared to implement PP 9945 on November 3, 2019, the requirements under PP 9945 are unconstitutional, unilaterally rewrite and attempt to supersede U.S. immigration laws and violate Congress's expressed intent through the Affordable Care Act to provide health care coverage to legal immigrants and citizens regardless of financial status. As such, compliance with and implementation of an unlawful Presidential Proclamation does not sufficiently justify an expedited ICR approval. Moreover, the timeline for implementation of PP 9945 is arbitrary and is based on a manufactured situation that falsely claims to be an emergency. Therefore, the DOS can neither demonstrate that circumventing established notice and comment procedures is necessary nor essential to carrying out its statutory mission.

Even if DOS could establish the first two criteria, it cannot demonstrate that any of the required four circumstances exist to justify emergency approval of the ICR. First, DOS has not demonstrated that public harm will occur if normal procedures are followed. DOS is upending normal procedures by implementing PP 9945 and is creating havoc by not issuing proper guidance on how the proclamation will be implemented in a manner that allows sufficient time for the public to adjust to the new requirements. Assuming that PP 9945 can even be lawfully implemented, allowing for the regular 60-Day and 30-Day comment processes will allow the public the time necessary to adjust to the new requirements, while maintaining status quo in the interim. Second, an unanticipated event has not occurred necessitating immediate implementation of the ICR. PP 9945 was not issued in response to a new or unexpected situation. The concerns raised by PP 9945 are those that have been in existence for many years and do not require such a short implementation window. Moreover, PP 9945 was issued nearly a month ago, which could have allowed for more than 2 days of public notice and comment opportunity. Third, as this information has never been collected in the past, it is not disrupting or preventing collection of information that is normally required. Finally, and most importantly, as noted above, there is no statutory requirement mandating collection of this information and litigation has been filed to enjoin the implementation of PP 9945.<sup>5</sup>

### **The ICR Provides No Guidance on how Determinations Pursuant to PP 9945 will be Made**

Although the ICR purports to announce a methodology established by the Secretary of State, as authorized by Section 3 of PP 9945, "to establish standards and procedures for governing such determinations" it wholly fails to do so. The draft DS-5541, a half-page questionnaire, does not provide any information to the public on how an applicant for an immigrant visa will demonstrate to the satisfaction of a consular officer that he or she will not impose a substantial burden on the U.S. healthcare system. It simply asks four questions, but provides no instructions on what types of evidence should be provided to demonstrate that the individual has the appropriate type of health insurance or how the individual can demonstrate, in the alternate, that he has sufficient resources

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<sup>5</sup> *Doe et.al v. Trump*, 3:19-cv-01743 (D. Or Oct. 30, 2019).

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to cover reasonably foreseeable medical costs. In and of itself, the questionnaire is useless for intending immigrants seeking to comply with PP 9945. Moreover, it appears to be inconsistent with the methodology of collection outlined in the Notice. Due to the cursory nature of the DS-5541 and the lack of accompanying instructions, it is unclear how the requested information will be completed. For example, the draft DS-5541 seems to require that the applicant provide information in writing, but the methodology described in the Notice then indicates that a consular officer will collect the information orally. Such inconsistencies may unnecessarily result in denials of eligible immigrants who are seeking to reunite with family members or engage in lawful employment in the United States. Moreover, guidance on how determinations will be made is imperative, particularly as the consular officers adjudicating the DS-5541 do not have the expertise or training necessary to assess whether the alien has the appropriate health insurance or means to pay for reasonably foreseeable medical costs.

### **Conclusion**

As indicated by DOS, this ICR could impact more than 450,000 applicants annually. Reports have indicated that implementation of PP 9945 could cut legal immigration by 65 percent.<sup>6</sup> Given the magnitude of this information collection, the lack of an urgent situation, and the need for clear guidance on the implementation of a proclamation that revises immigration law as we know, AILA implores OMB to deny the request for an emergency approval of the information collection request related to the Immigrant Health Insurance Coverage and require that the DOS go through the required 60-Day and 30-Day comment processes before it can implement PP 9945.

Sincerely,

THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

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<sup>6</sup> Nicole Area & Alex Ward, *Trump Quietly Cut Legal Immigration by Up to 65%*, VOX (Oct. 30, 2019) available at <https://www.vox.com/2019/10/9/20903541/trump-proclamation-legal-immigration-health-insurance>.