



Policy solutions that work for low-income people

May 11, 2020

Ms. Samantha Deshommnes, Chief
Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security

Electronically submitted via www.regulations.gov

Re: Docket ID USCIS-2007-0029: Affidavit of Support Under Section 213A of the Act, Form I-864; Contract Between Sponsor and Household Member, Form I-864A; Affidavit of Support Under Section 213 of the Act, I-864EZ

Dear Chief Deshommnes,

The Center for Law and Social Policy (CLASP) respectfully submits this comment opposing changes for Form I-864, Affidavit of Support, and related forms, USCIS-2007-0029; OMB Control Number 1615-0075.

Established in 1969, CLASP is a national, non-partisan, non-profit, anti-poverty organization that advances policy solutions for people with low incomes. Our comments draw upon the work of CLASP experts in the areas of immigration and anti-poverty policies. As a national anti-poverty organization, we bring a deep commitment to families living with low incomes and knowledge of the challenges that they experience as a result. We are also experts on how administrative burden, through paperwork and other requirements, can be a barrier to accessing programs and services without changing eligibility criteria.¹

Immigrants have played an important role in America's history, and our future prosperity depends on their ability to thrive. One in four children in the U.S. – nearly 18 million children – has at least one immigrant parent, and the vast majority (about 88 percent or 16 million) are U.S.-born citizens.² Immigrant women comprise 52 percent of the U.S. immigrant population, and many are parents of U.S. citizen children.³ Young adults who are immigrants, also crucial to America's economic future, represent 8 percent of the immigrant population and 10 percent of all young adults.⁴ Immigrant families also comprise about one third of the low-income population, and their ability to secure long-term legal status can help them climb the economic ladder.⁵

This comment is in response to a proposed revision of the forms used to submit an Affidavit of Support for a sponsor of an immigrant. Sponsorship is a critical element of the United States' system of family based immigration. The affidavit of support is required for most family-based immigrants and some employment-based intending immigrants to show that they have adequate means of financial support and are not likely to become a public charge. Affidavits of support are contracts between the sponsor that completes the affidavit and the U.S. Government, and on the affidavit the sponsor must show and attest that they have sufficient income and/or assets to maintain the intending immigrants and the rest of their household. The affidavit is the agreement by the sponsor that they will use their resources to support the immigrants as agreed if it becomes necessary. 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. In the notice, the U.S. Citizenship and Immigration Services estimates that over 450,000 respondents must complete the I-684, and an additional 100,000 must complete the I-684EZ.

As discussed below in more depth, we believe that the revision of this form is an improper attempt to bypass both the rulemaking process and Congress to impose additional burdens on sponsors in order to limit family-based immigration, and should be halted until both the national health emergency caused by COVID-19 has ended, and forthcoming proposed rules changing the requirements for the affidavit of support have been published, commented upon, reviewed, and finalized. However, in case USCIS proceeds with the revision, we also comment on some specific provisions of the form.

Proposed Revision is Improper Attempt to Bypass Rulemaking and Deter Sponsors

The notice of proposed changes to these forms was first published in the Federal Register on October 15, 2019, the date that the "public charge" rule, a rule with drastic implications for family-based immigration, was originally scheduled to take effect. As a result, most immigrants and their advocates were focused elsewhere, and this notice received relatively little attention. USCIS re-opened these for only an additional 30 day comment period on April 10, 2020, in the middle of a global pandemic, with nearly 90 percent of the United States under stay at home orders.⁶

Two weeks later, on April 21, 2020, the Office of Information and Regulatory Affairs (OIRA) at the U.S Office of Management and Budget, reported on its website that it had received a proposed rule on the Affidavit of Support on Behalf of Immigrants for review under Executive Order 12866.⁷ This rule is classified as an economically significant rule. In the semi-annual regulatory agenda, OMB reported that "DHS intends to update regulations at 8 CFR 213a to enhance the integrity of the affidavit of support contract between sponsors and the U.S. Government."⁸

Updating the form in advance of this rulemaking process makes no sense, and appears to be an attempt to bypass the legally required rulemaking process under the Administrative Procedures Act to change the requirements of the affidavit of support with minimal public input, as updates to forms receive far less scrutiny than rulemaking processes.

USCIS is proposing to require, among other things, that U.S. citizens and lawful permanent residents sponsoring their foreign spouse or relatives for a green card provide in-depth bank account information and have the forms notarized by a notary public. USCIS provides no evidence that these changes would make it more likely that sponsors would provide accurate information on the affidavits of support, which they already must sign on penalty of perjury. These changes do add to the paperwork burden and cost involved in completing the forms. In addition, immigrants who have experience with corrupt governments or have experienced identity theft may be particularly reluctant to share their full bank routing information with the government. Finally, we are deeply concerned that the vagueness and lack of clarity of the section on when sponsors may be required to repay the government for benefits received by the sponsored immigrant will create confusion and fear, discouraging people from serving as sponsors.

These negative consequences do not appear to be accidental. We believe them to be the intended result of, and the motivation for, these changes to the form. In other words, these changes are an attempt to use administrative burden as a means to achieve the Trump Administration's long-standing objective of limiting family based immigration to the United States, particularly from certain countries.

Donald Trump has expressed his support for dramatic changes to family-based immigration, particularly when the immigrants come from certain countries. Since the start of his Presidential bid, Trump has made numerous and frequent statements that explicitly express hostility to immigrants from Latin America, Africa, and Middle Eastern countries where the majority of people are not white and have low incomes, which are directly relevant to understanding the administration's motivations.

Examples include:

- During his first campaign speech, Trump said: “When Mexico sends its people, they’re not sending their best. They’re sending people that have lots of problems. They’re bringing drugs. They’re bringing crime. They’re rapists.”⁹
- On January 26, 2017, less than a week after taking office, President Trump issued the first of three executive orders banning people from predominantly Muslim countries from entering or reentering the United States. The ban currently affects millions of people, including hundreds of thousands of U.S citizens and permanent residents, who are prevented from reuniting with family members who live in the designated countries.
- In June 2017, Trump said 15,000 recent immigrants from Haiti “all have AIDS” and that 40,000 Nigerians, once seeing the United States, would never “go back to their huts” in Africa.¹⁰
- On July 26, 2017, President Trump expressed his support for the RAISE Act and promised “to create a new immigration system for America. Instead of today’s low-skill system, just a terrible system where anybody comes in.”¹¹ However, this bill only received support from three Senators, and was never even heard in committee.¹²
- On January 11, 2018 President Trump complained about “these people from shithole countries” coming to the United States and added that the United States should accept more immigrants from countries like Norway.¹³

- In August 2019, Ken Cuccinelli, the acting director of U.S. Citizenship and Immigration Services, twisted the words of the famous Emma Lazarus poem and said "give me your tired and your poor who can stand on their own two feet and who will not become a public charge."¹⁴ In a subsequent interview, Cuccinelli went a step further, saying the poem referred to "people coming from Europe."¹⁵
- Steven Miller, a lead advisor on immigration affairs, has called said that the temporary suspension of most immigration, purportedly in response to the COVID-19 crisis, is actually the first step in a longer term vision of cutting off immigration, and particularly family-based visas.¹⁶ Miller has been seeking justifications for such restrictions, and for other ways to limit immigration, since the start of the administration.¹⁷

We therefore call upon USCIS to suspend any attempts to change these forms until both the national health emergency caused by COVID-19 has ended, and the proposed rules changing the requirements for the affidavit of support have been published, commented upon, reviewed, and finalized.

Requiring In-Depth Bank Account Information from All Sponsors is Neither Relevant nor Necessary

USCIS is proposing to add a new requirement to the Form I-864 and related Forms I-864A and I-864EZ which would require U.S. citizens and lawful permanent residents sponsoring their foreign spouse or relatives for a green card to provide in-depth bank account information. Specifically, sponsors (and household members whose income and/or assets are being used by a sponsor to qualify) would be required to provide the name of the banking institution, the number of the bank account, the routing number of the account, the account holder's name, and the name of any joint account holders.

There is no legal authority for USCIS to require this information from all U.S. citizens and lawful permanent residents sponsoring their foreign spouse or relatives for a green card. Bank account information is not necessary or even relevant in order to verify the sponsor or household member's income, which is done through the submission of Federal income tax returns, W-2 wage and tax statements, and letters of employment. In some limited circumstances where the sponsor is using assets, specifically money in a bank account to satisfy the 125 percent of the federal poverty guidelines, sponsors are already required to provide evidence of those assets by submitting copies of bank statements.

Moreover, this new requirement raises significant privacy concerns. In today's environment where cybercrime and identity theft are becoming more rampant, requiring all sponsors to disclose detailed bank account information, particularly when it is not even relevant or necessary, exposes them to heightened risk of becoming an identity crime victim. Individuals with close connections to countries with high levels of government corruption may be particularly concerned about sharing this information with a government agency.

Requiring Form I-864 and Related Forms to be Notarized by a Notary Public is an Inconvenient and Needless Burden Inconsistent with U.S. Law

28 U.S.C. section 1746 permits federal forms, including Form I-864 and related Form I-864A and Form I-864EZ, to be executed under penalty of perjury. Under its new proposal, USCIS is illegally proposing to add an additional requirement that these forms must be notarized by a notary public in order for the forms to be properly executed. This proposal is also inconsistent with 8 CFR § 213a.2(a)(ii), and the February 15, 2018 USCIS Policy Memo (PM-602-0134.1) entitled “Signatures on Paper Applications, Petitions, Requests, and Other Documents Filed with U. S. Citizenship and Immigration Services.” USCIS is therefore attempting through this form amendment to reinstate an requirement that it expressly eliminated 13 years ago through the promulgation of a final regulation written to comply with a federal statute.

The requirement to have the form notarized by a notary public adds undue and unnecessary burdens on sponsors and the household members whose income and/or assets are being used by the sponsor to qualify to sponsor a foreign national for a green card. In particular, this new requirement would impose unnecessary costs, travel burdens, and logistical challenges on the sponsor/household member to have these forms notarized by a notary public. This requirement is particularly burdensome in light of social distancing protocols and stay-at-home orders that are being imposed by local and state authorities, as well as countries around the globe, as a result of the COVID-19 pandemic. It is also unclear whether a non-U.S. notary would count for this requirement.

Confusing and Incomplete Description of Requirements May Deter Sponsors

As noted by the National Immigration Law Center in their comments on this form, the proposed revisions are confusing and incomplete, which makes it more difficult for the public to understand their rights and responsibilities.¹⁸ We concur with the entirety of their detailed recommendations for revising the form, but note in particular the significance of a few particular issues:

- We share their concern with the replacement of the modifier, “designated”, with “any” Federal, state, or local means-tested public benefits. Federal law only requires sponsor deeming and liability for certain designated benefits. It is inconsistent with the law to suggest to sponsors that the affidavit of supports would make them liable for other benefits received by the sponsored immigrant.
- Similarly, the description of when a sponsor can be sued for failure to reimburse the benefit granting agency for benefits omits critical information, namely that the sponsored immigrant must receive those benefits after having become a lawful permanent resident and while the affidavit of support is in effect, and that the agency must have requested repayment of the benefits.

Conclusion

OMB asks those commenting on the proposed revisions to address these issues:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

USCIS provides no evidence that the requirements newly added to the form are needed to ensure the functions of the agency. In fact, as discussed above, they are contradictory to regulatory and statutory requirements.

The only justification offered for this form revision is the Presidential Memorandum of May 23, 2019 which emphasizes that "sponsors who pledge to financially support sponsored aliens are expected to fulfill their commitment under the law." However, USCIS offers no evidence to support the implicit claim that the additional requirements will make it more likely that sponsors will support the immigrants they have sponsored. Moreover, even if they did have such evidence, a Presidential Memorandum does not overturn statutory requirements or the Administrative Procedures Act.

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

USCIS provides little detail on how it generated its estimate of the burden of the proposed collection of information. However, we note that between the version of this information collection posted in October 2019 and the one posted in April 2020, the USCIS estimate of the number of people who would need to fill out the form I-864A was reduced dramatically to be identical to the number listed in the 2017 revision. No explanation of the change is provided. In addition, there is no evidence that USCIS has taken into consideration the cost of getting documents notarized, or of additional legal fees that sponsors are likely to incur.

(3) Enhance the quality, utility, and clarity of the information to be collected;

As noted above, in several cases the changes reduce the clarity of the instructions.

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The changes have the opposite effect of minimizing the burden of collection of information, in particular through the requirement to get documents notarized. (Only a few states generally permit remote notarization through webcams, although more have temporarily allowed it during the emergency.)

Therefore, we call upon OMB and USCIS to suspend any attempts to change these forms until both the national health emergency caused by COVID-19 has ended, and the proposed rules changing the requirements for the affidavit of support have been published, commented upon, reviewed, and finalized.

If USCIS persists in going forward with revised forms, we urge it to remove the requirements that U.S. citizens and lawful permanent residents sponsoring their foreign spouse or relatives for a green card must provide in-depth bank account information on Form I-864, Form I-864A, and Form I-864EZ, and have these forms notarized by a notary public. In addition, we urge changes to language on the forms to clarify the circumstances under which sponsors may be required to repay the government for benefits received by the sponsored immigrant.

Our comments include citations to supporting research and documents for the benefit of USCIS in reviewing our comments. We direct USCIS to each of the items cited and made available to the agency through active hyperlinks, and we request that these, along with the full text of our comments, be considered part of the formal administrative record on this proposed information collection.

Thank you for your consideration. If you have any questions regarding these comments, you may contact Elizabeth Lower-Basch at elowerbasch@clasp.org

¹ Elizabeth Lower-Basch, "Improving Access, Cutting Red Tape," Center for Law and Social Policy, April 2017, <https://www.clasp.org/publications/journal-article/improving-access-cutting-red-tape>; For a discussion of how administrative burden is often deliberately used to restrict access, see: Donald Moynihan and Pamela Herd, *Administrative Burden: Policymaking by Other Means*, New York: Russell Sage Foundation, 2018.

² State Immigration Data Profiles, "United States - Demographics & Social," Migration Policy Institute, n.d., <https://www.migrationpolicy.org/data/state-profiles/state/demographics/US>.

³ Jie Zong, Jeanne Batalova, and Jeffrey Hallock, "Frequently Requested Statistics on Immigrants and Immigration in the United States," Migration Policy Institute, February 2018, <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states>.

⁴ CLASP analysis of 2016 American Community Survey Data.

⁵ Annie E. Casey Foundation, *Race for Results*, Annie E. Casey Foundation, October 2017, <https://www.aecf.org/resources/2017-race-for-results/>.

⁶ Phillip Bump, "Nearly all Americans are under stay-at-home orders. Some may have come too late," *The Washington Post*, April 2020, <https://www.washingtonpost.com/politics/2020/04/02/nearly-all-americans-are-under-stay-at-home-orders-some-may-have-come-too-late/>.

⁷ Enhancing the Integrity of the Affidavit of Support 8 CFR 213a, OMB 12866 Dashboard, 2019, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=1615-AC39> as accessed on May 9, 2020.

⁸ Enhancing the Integrity of the Affidavit of Support 8 CFR 213a, OMB 12866 Dashboard, 2019, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201904&RIN=1615-AC39> as accessed on May 9, 2019.

⁹ Washington Post Staff, "Full text: Donald Trump announces a presidential bid," *The Washington Post*, June 2015, https://www.washingtonpost.com/news/post-politics/wp/2015/06/16/full-text-donald-trump-announces-a-presidential-bid/?utm_term=.c35512e917ef.

¹⁰ Michael D. Shear and Julie Hirschfeld Davis, "Stoking Fears, Trump Defied Bureaucracy to Advance Immigration Agenda," *The New York Times*, December 2017, <https://www.nytimes.com/2017/12/23/us/politics/trump-immigration.html>.

¹¹ President Donald J. Trump Backs RAISE Act, The White House, August 2017, <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-backs-raise-act/>.

¹² S.1720 - RAISE Act, 115th U.S. Congress, August 2017, <https://www.congress.gov/bill/115th-congress/senate-bill/1720>.

-
- ¹³ Josh Dawsey, “Trump derides protections for immigrants from ‘shithole’ countries,” *The Washington Post*, January 2018, https://www.washingtonpost.com/politics/trump-attacks-protections-for-immigrants-from-shithole-countries-in-oval-office-meeting/2018/01/11/bfc0725c-f711-11e7-91af-31ac729add94_story.html?utm_term=.7fc895490993.
- ¹⁴ Sasha Ingber and Rachel Martin, “Immigration Chief: ‘Give Me Your Tired, Your Poor Who Can Stand On Their Own 2 Feet’,” *National Public Radio*, August 2019, <https://www.npr.org/2019/08/13/750726795/immigration-chief-give-me-your-tired-your-poor-who-can-stand-on-their-own-2-feet>.
- ¹⁵ “Trump Official Says Statue of Liberty Poem is About Europeans,” *PBS News Hour*, August 2019, <https://www.pbs.org/newshour/nation/trump-official-says-statue-of-liberty-poem-is-about-europeans>.
- ¹⁶ Nick Miroff and Josh Dawsey, “Stephen Miller has long-term vision for Trump’s ‘temporary’ immigration order, according to private call with supporters,” *The Washington Post*, April 2020, https://www.washingtonpost.com/immigration/stephen-miller-audio-immigration-coronavirus/2020/04/24/8eaf59ba-8631-11ea-9728-c74380d9d410_story.html.
- ¹⁷ Caitlin Dickerson and Michael D. Shear, “Before Covid-19, Trump Aid Sought to Use Disease to Close Borders,” *The New York Times*, May 2020, <https://www.nytimes.com/2020/05/03/us/coronavirus-immigration-stephen-miller-public-health.html>.
- ¹⁸ National immigration Law Center, Comment on the U.S. Citizenship and Immigration Services (USCIS) Notice: Agency Information Collection Activities; Revision of a Currently Approved Collection: Affidavit of Support Under Section 213A of the Act, Regulations.gov, April 2020, <https://www.regulations.gov/document?D=USCIS-2007-0029-0130>.