



Billing Code 4710-06

DEPARTMENT OF STATE

[Public Notice 11064]

Notice of OMB Emergency Approval of Information Collection: Public Charge Questionnaire

ACTION: Notice of OMB emergency approval of information collection.

SUMMARY: The Office of Management and Budget (“OMB”) approved the Department of State’s (“Department”) submission of an information collection described below, the DS-5540, Public Charge Questionnaire (“DS-5540”), following the Department’s request for emergency processing.

DATES: OMB approved the Department’s request on February 20, 2020. This procedure was conducted in accordance with 5 CFR 1320.1.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice to Taylor Beaumont, Acting Chief, Legislation and Regulations Division, Visa Services, Bureau of Consular Affairs, Department of State, 600 19th St. NW, Washington, DC 20006, (202) 485-8910, PRA_BurdenComments@state.gov.

SUPPLEMENTARY INFORMATION:

The Department published a “Notice of Intent to Request Emergency Processing of Information Collection: Public Charge Questionnaire” (“DS-5540”), notifying the public of the Department’s intent to seek emergency processing of the DS-5540 on February 12, 2020. 85 FR 8087. Consistent with the Paperwork Reduction Act of 1995 (“PRA”), and OMB procedures, the Department requested approval after emergency processing of the

DS-5540. On October 24, 2019, the Department had published a Notice of Request for Public Comment for the DS-5540, initiating a 60-day period for the public to submit comments on the information collection 84 FR 5712. The 60-day comment period ended on December 23, 2019, and the Department received 92 comments. On February 12, in the Supporting Statement for the Department's request for OMB emergency processing and approval of the DS-5540, the Department responded to public comments received during the 60-day comment period, as well as comments received pursuant to the emergency notice for the separate DS-5541, Immigrant Health Insurance Coverage ("DS-5541") (84 FR 58199) that are pertinent to the DS-5540. The health insurance-related questions in the DS-5540 are relevant for making a public charge assessment, so the Department is responding to public comments to the DS-5541 even though the implementation of Presidential Proclamation 9945, whose implementation would have necessitated use of the DS-5541, is currently enjoined by federal court order. The Department plans to complete the ongoing PRA process for three-year approval of the DS-5540 since approval based on emergency processing under the PRA is only granted for a maximum of 180 days, until August 31, 2020.

- *Title of Information Collection:* Public Charge Questionnaire
- *OMB Control Number:* 1405-0234
- *Type of Request:* Emergency Processing
- *Originating Office:* Bureau of Consular Affairs, Visa Office (CA/VO)
- *Form Number:* DS-5540
- *Respondents:* Immigrant visa applicants, including diversity visa applicants, with exceptions, and certain nonimmigrant visa applicants

- Estimated Number of Respondents: 397,814
- Estimated Number of Responses: 397,814
- Average Time Per Response: 4.5 hours
- Total Estimated Burden Time: 1,790,163 hours
- Frequency: Once per respondent application
- Obligation to respond: Required to Obtain or Retain a Benefit

1. Abstract of Proposed Collection

Aliens who seek a visa, application for admission, or adjustment of status must establish that they are not likely at any time after admission to become a public charge, unless Congress has expressly exempted them from this ground of ineligibility or if the alien obtained a waiver. Consular officers will use the completed forms to assess whether an alien is more likely than not to become a public charge, and is thus ineligible for a visa under section 212(a)(4)(A) of the Immigration and Nationality Act (“INA”), 8 U.S.C. section 1182(a)(4), and 22 CFR 40.41. This collection is consistent with the burden of proof on aliens under section 291 of the INA, 8 U.S.C. section 1361, to establish that they are eligible to receive a visa, including that they are not inadmissible under any provision of the INA. This information collection is consistent with the statutory requirement in section 212(a)(4)(B), 8 U.S.C. section 1182(a)(4)(B), and regulatory requirement in 22 CFR 40.41, that consular officers must consider an alien’s age; health; family status; assets, resources, and financial status; and education and skills in determining whether a visa applicant is more likely than not to become a public charge.

The DS-5540 collects information relating to the visa applicant's age; health; family status; assets, resources, and financial status; and education and skills. The DS-5540 will require visa applicants to provide information on whether they have received certain specified public benefits from a U.S. federal, state, territorial, or local government entity.

Sponsors of immigrant visa applicants must currently provide information regarding their ability to financially support the sponsored visa applicant on DHS Form I-864, Affidavit of Support, which consular officers consider in evaluating whether a visa applicant is likely to become a public charge, but which alone is not a sufficient basis to evaluate public charge. The I-864 may have some information about a visa applicant's assets, although the primary respondent is the sponsor, not the sponsored visa applicant. The DS-5540 will be used to collect information to assess whether the visa applicant is more likely than not to become a public charge, based on the totality of the circumstances, as set forth in 22 CFR 40.41.

Applicants for an immigrant visa, including a diversity visa, will be required to complete the DS-5540, except for those individuals who are exempt from the public charge ground of inadmissibility. The exempted categories of individuals will be specified in the DS-5540 instructions, including but not limited to visa applicants seeking immigrant visas based on qualified service to the U.S. government as an interpreter in Afghanistan or Iraq, visas based on a self-petition under the Violence Against Women Act, and visas for special immigrant juveniles. Additionally, a consular officer may, in his or her discretion, require a nonimmigrant visa applicant to complete some or all of the DS-5540. A nonimmigrant visa applicant will be required to respond to one or more

questions from the DS-5540, orally or in writing, if the consular officer is unable to determine from other applicant-provided documentation whether the visa applicant is more likely than not to become a public charge during his or her stay in the United States.

2. Ongoing PRA Process

On October 24, 2019, the Department published a notice in the *Federal Register* to announce that it was seeking OMB approval of the DS-5540, and invited public comment for a 60-day period. The 60-day comment period ended on December 23, 2019, and the Department received 92 comments. The Department's responses to those comments are in the associated Supporting Statement. Because changed circumstances now require the Department to implement its interim final rule on the public charge ineligibility ground before it can complete the routine process for obtaining approval of an information collection under 5 CFR 1320.10, the Department was granted emergency OMB approval pursuant to 5 CFR 1320.13 in order for the DS-5540 to be used by consular officers beginning 12:01 AM Eastern Standard Time February 24, 2020. It was not possible to complete 30 days of public comment before February 24, 2020. This information collection is intended to align the Department's standards with those of DHS, to avoid situations where a consular officer will evaluate a visa applicant's circumstances and conclude that the visa applicant is not likely at any time to become a public charge, only for a DHS officer to evaluate the same individual when he or she seeks admission to the United States on the visa and finds the individual inadmissible on public charge grounds under the same facts.

3. Methodology

The DS-5540 will be available online in fillable PDF format. Visa applicants will download the completed form and submit the completed DS-5540 to the consular officer, or to the Department with other documentation in advance of the interview.

Carl C. Risch,

Assistant Secretary.

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