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*National Advocates for Asian  
American, Native Hawaiian &  
Pacific Islander Health*

October 31, 2019 (Submitted Via Email)

Secretary Mike Pompeo  
United States Department of State  
2201 C St NW, Washington, DC 20520

Director Mick Mulvaney  
Office of Management and Budget  
725 17th St NW, Washington, DC 20503

**Re: Notice of Information Collection Under Office of Management and  
Budget (OMB) Emergency Review: Immigrant Health Insurance Coverage**

Dear Secretary Pompeo and Director Mulvaney,

Thank you for the opportunity to comment on the Department of State's Notice of Information Collection Under Office of Management and Budget (OMB) Emergency Review: Immigrant Health Insurance Coverage regarding Form DS-5541. We write out of deep concern and opposition to both the request for emergency review and on the underlying proposal.

**Background and Expertise of APIAHF**

The Asian & Pacific Islander American Health Forum (APIAHF) is the nation's leading health policy organization working to advance the health and well-being of over 20 million Asian Americans, Native Hawaiians and Pacific Islanders (AA and NHPi) across the U.S. and territories. APIAHF works to improve access to and the quality of care for communities who are predominately immigrant, many of whom are limited English proficient, and may be new to the U.S. health care system or unfamiliar with private or public coverage. We have longstanding relationships with over 150 community based organizations in 32 states, to whom we provide capacity building, advocacy and technical assistance. As such, we have a strong understanding of the needs and barriers in immigrant communities and the impact changes in immigration and public assistance policy would have on them.

For over 32 years, APIAHF has worked extensively on both the issues of immigration and health; areas of policy that this proposed rule would upend. Through research, analysis and community partnerships, these issues are the core of our expertise. APIAHF and our partners have consistently advocated for the importance of access to health care and other public assistance for all families, regardless of their citizenship status. We know from experience that access to quality health care, not burdened by obstacles like finances, means families can thrive and contribute to their communities. At the same time, we are reminded that our country has a deep history of racial discrimination that has contributed to health disparities among communities of color, including AA and NHPis.

## **Two Day Comment Period Is Unacceptable**

OMB should not grant emergency review of this information collection. The State Department (State) justifies the need for review based on the November 3 implementation date. However, State provides no evidence for why this implementation date is needed nor does it appear to have considered alternative dates. State does not offer any other justification for why emergency review is justified.

This Notice was published on October 30, 2019, and will close for comments on October 31. This two-day review period is not sufficient to properly review the proposed information collection implementing the Presidential proclamation. While this comment attempts, under this short time frame, to outline some initial concerns, a full 60 day or longer comment period is needed to fully understand the complex implications of this policy on the 450,500 immigrants that State has assessed it will impact, including the costs that it will lead to for immigrants, their families, and the U.S. health care system.

## **The 10 Minute Estimation of Completion Time Is Inaccurate**

This Notice proposes that consular offices, in implementing the Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System, will ask each applicant for an immigration visa a series of questions about her plan for being covered by health insurance within 30 days of entering the United States including:

- The specific health insurance plan;
- The date coverage will begin;
- “Such other information,” which is not elaborated on in the Notice; and
- Whether, if not planning to purchase health insurance, the applicant has financial resources to pay for reasonably foreseeable medical expenses.

State claims that the Average Time Per Response to comply with the Information Collection will be 10 minutes. We believe that time estimate is inaccurate, particularly given the proposed questions. This Notice requires hundreds of thousands of immigrants who otherwise may have waited until arriving in the U.S. to purchase health insurance to spend time in their home country researching their health insurance options, finding a plan that will accept customers who are not yet residing in the country and signing up. The information requested by the Notice will be impossible to provide otherwise, given that an applicant will be unable to know the start date, or even whether their chosen insurance carrier will accept them as a customer, without applying for coverage itself. This process could take hours or even days. Evaluating only the time it takes for a consular officer to ask a series of questions and not the time it takes to prepare for the set of questions is not a valid analysis of the impact of this Notice.

This Average Time Per Response not does account for the fact that many visa applicants will be unfamiliar with the U.S. health care system, which is complex due to the web of private and public insurance options, and varying eligibility for immigrants within those options.<sup>1</sup> Many immigrants may be coming from countries where private health insurance is not available or looks completely different.

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<sup>1</sup> “Snapshot: Immigrant Health in the United States,” Asian & Pacific Islander American Health Forum (August 2019). Available at: <https://www.apiahf.org/resource/snapshot-immigrant-health-in-the-united-states/>.

One review of refugees experiences found that a lack of knowledge about their host country's health care systems led to confusion and poor quality of care.<sup>2</sup>

### **A Majority of Visa Holders May Be Denied Entry**

According to the Migration Policy Institute, 375,000 immigrants may be denied entry to the U.S. under the Presidential proclamation.<sup>3</sup> This analysis also reviews potential ways that State could implement the policy that may vary the number of immigrants impacted. This Notice, by requiring visa applicants to have pre-selected a plan, likely maximizes the number of denials that could occur.

State does not specify how or whether it will train staff to understand the different types of health insurance and whether a plan meets the conditions required under the Presidential proclamation. This means that there is potential for a visa applicant to be incorrectly denied because his officer does not understand our complex health care system. This concern is born-out by the inconsistent way the Public Charge update to the Foreign Affairs Manual has been carried out, with some countries seeing disproportionately high increases in denials.<sup>4</sup>

This Notice may have a disproportionate impact on immigrants from Asian and Pacific Islander countries. 31% percent of the 1.1 million immigrants receiving green cards this year are from Asia and the Pacific Islands, including 40 percent of family based immigrants and 54 percent of employment-based immigrants.<sup>5</sup>

### **The Notice Discriminates Against Limited English Proficient Populations**

We are concerned this Notice will discriminate against individuals who are Limited English Proficient (LEP), meaning they speak English less than "very well." Over 6 million people of Asian and Pacific Islander background in the United States are LEP.<sup>6</sup> While language access protections exist for those trying to sign up for health insurance in the U.S. under Section 1557 of the Affordable Care Act, they only apply to health insurance plans that receive federal funding. However, under the Presidential proclamation, most of those plans are explicitly deemed not acceptable forms of insurance that would allow visa applicants to be admitted. The remaining options, such as Short Term Limited Duration and Travel Insurance plans, may have no or low quality information or assistance available to consumers in

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<sup>2</sup> Mangrio, E. and Sjögren Forss, K. (2017). Refugees' experiences of healthcare in the host country: a scoping review. BMC health services research, 17(1), 814. Available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5721651/>.

<sup>3</sup> Galatt, Julia and Mark Greenberg, "Health Insurance Test for Green-Card Applicants Could Sharply Cut Future U.S. Legal Immigration", Migration Policy Institute (October 2018). Available at: <https://www.migrationpolicy.org/news/health-insurance-test-green-card-applicants-could-sharply-cut-future-us-legal-immigration>.

<sup>4</sup> Hesson, Ted, "Exclusive: Visa Denials To Poor Mexicans Skyrocket Under Trump's State Department," Politico (August 6, 2019). Available at: <https://www.politico.com/story/2019/08/06/visa-denials-poor-mexicans-trump-1637094>.

<sup>5</sup> "Public Charge Proposals is an Attack on AAPI Families," Asian & Pacific Islander American Health Forum (November 2018). Available at: [https://www.apiahf.org/wp-content/uploads/2018/09/December2018\\_Public-Charge-Factsheet.pdf](https://www.apiahf.org/wp-content/uploads/2018/09/December2018_Public-Charge-Factsheet.pdf).

<sup>6</sup> "Protections For Language Access Are At Risk", Asian & Pacific Islander American Health Forum (August 2019). Available at: <https://www.apiahf.org/resource/protections-for-language-access-are-at-risk/>.

their preferred language. This may mean that either visa applicants who are LEP will be unable to find insurance, or they will find inaccurate information that leads them to purchasing insurance that is either not compliant with the Presidential proclamation or will not cover their health care needs.

In addition to our concern that this lack of support for LEP individuals may make it extremely difficult for them to comply with this Notice, it also makes it likely that they will be vulnerable to fraudulent companies and bad actors seeking to take advantage of visa applicants with low health literacy. It would be easy to set up a website in multiple languages claiming to offer health insurance for immigrants to the U.S., ask for payment up front, and then provide no or extremely low quality coverage. Because these sites may operate internationally, immigrants may have no recourse when they arrive in the country and discover their insurance does not cover what they thought it did. In one example of such fraud, British tourists to Spain paid travel health insurance companies for health insurance that did not cover services beyond those they were already covered for under the country's national health care system.<sup>7</sup> State provides no explanation for how or whether consular officers will evaluate whether a health insurance plan provides real coverage or not.

### **The Presidential Proclamation Is Incorrectly Justified**

The Presidential proclamation that this Information Collection is being proposed under incorrectly justifies its need by claiming that immigrants contribute to uncompensated care costs in a significant way. The Presidential proclamation states, "While our healthcare system grapples with the challenges caused by uncompensated care, the United States Government is making the problem worse by admitting thousands of aliens who have not demonstrated any ability to pay for their healthcare costs."<sup>8</sup> However, the Kaiser Family Foundation has found that lawfully present immigrants make up just 15 percent of the uninsured and that immigrants may actually improve health care risk pools, lowering costs, because they tend to be younger and healthier.<sup>9</sup>

In fact, the Presidential proclamation may worsen uncompensated care costs by shifting immigrants from subsidized comprehensive plans under the Affordable Care Act to low-cost Short Term Limited Duration Plans, which cover much less and likely will lead to higher out of pocket costs that the customers cannot afford.<sup>10</sup> One health system executive recently said that, under expansion of these plans, the "longer coverage period of the policies and lack of essential coverage inherently puts health

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<sup>7</sup> Willmore, Simon, "Thousands of British tourists have travel insurance policies that only cover public healthcare," Travel Daily Media (July 9, 2019). Available at: <https://www.traveldailymedia.com/brits-insurance-only-public-healthcare/>.

<sup>8</sup> "Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System," The White House (October 4, 2019). Available at: <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-suspension-entry-immigrants-will-financially-burden-united-states-healthcare-system/>.

<sup>9</sup> "President Trump's Proclamation Suspending Entry for Immigrants without Health Coverage," Kaiser Family Foundation (October 10, 2019). Available at: <https://www.kff.org/disparities-policy/fact-sheet/president-trumps-proclamation-suspending-entry-for-immigrants-without-health-coverage/>.

<sup>10</sup> "ACA Open Enrollment: For Consumers Considering Short-Term Policies," Kaiser Family Foundation (October 25, 2019). Available at: <https://www.kff.org/health-reform/fact-sheet/aca-open-enrollment-for-consumers-considering-short-term-policies/>.

systems at risk for increases in uncompensated care.”<sup>11</sup> Given that these plans are misleadingly marketed, many immigrants may not even realize that their health insurance does not cover many medical treatments.<sup>12</sup>

We also express concern that other forms of health insurance that are acceptable under the Presidential proclamation, such as unsubsidized plans offered within the individual market, will be unavailable to those who are not yet residents of the U.S. Purchasing a health insurance plan that not does come with Premium Tax Credits under the ACA through the marketplaces still requires demonstration of residency in the state and county that the plan is being offered. Additionally, while employer sponsored insurance is deemed acceptable, employers are allowed to require new employees to wait 90 days until their insurance is activated.<sup>13</sup> This Notice says that visa applicants, however, will be required to demonstrate that they will have health insurance within 30 days of entry.

Because of the reasons described above, we believe this proposal should be withdrawn both because of the insufficient time to review and because of the irreversible flaws in the policy itself.

Thank you for your willingness to consider our comments. If you would like any additional information, please contact Ben D’Avanzo, Senior Policy Analyst, at [bdavanzo@apiahf.org](mailto:bdavanzo@apiahf.org) or 202-706-6767.

Sincerely,



Kathy Ko Chin

President & CEO  
Asian & Pacific Islander American Health Forum

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<sup>11</sup> Kern, Howard, “Commentary: Short-term, limited-duration health plans pose risks for patients, healthcare providers,” Modern Healthcare (February 23, 2019). Available at:

<https://www.modernhealthcare.com/article/20190223/NEWS/190229983/commentary-short-term-limited-duration-health-plans-pose-risks-for-patients-healthcare-providers>.

<sup>12</sup> Corlette, Sabrina, et al, “The Marketing of Short-Term Health Plans,” Robert Wood Johnson Foundation (January 31, 2019). Available at: <https://www.rwjf.org/en/library/research/2019/01/the-marketing-of-short-term-health-plans.html>.

<sup>13</sup> Andrews, Michelle, “A Reader Asks: Can New Employees Be Forced To Wait 90 Days For Coverage?,” Kaiser Health News (June 27, 2014). Available at: <https://khn.org/news/michelle-andrews-on-delays-in-employer-provided-coverage/>.