

Submitted via regulations.gov

Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Ave., NW
Washington, DC 20429-2140

Re: OMB Control Number 1615-0075, USCIS, Agency Information Collection Activities;
Revision of a Currently Approved Collection: Affidavit of Support Under Section 213A of
the Act; Docket ID USCIS-2007-0029

Dear Ms. Deshommes:

I am writing on behalf of the Immigrant Legal Resource Center (ILRC) in opposition to the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS) proposed changes to Form I-864, Affidavit of Support, and related forms, USCIS-2007-0029; OMB Control Number 1615-0075, published in the Federal Register on April 10, 2020.

The ILRC is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The ILRC's mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates and pro bono attorneys annually on immigration law, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations in building their capacity.

USCIS is proposing a number of changes to Form I-864 and related Forms I-864A and Form I-864EZ that we oppose, as detailed below.

I. The Paperwork Reduction Act (PRA) Process is Inappropriate for Substantive Guidance Changes

USCIS has proceeded in this process with a collection of information under the PRA. The PRA requires the agency to explain the purpose of the form being produced and its burden on the public. Here, however, much more than a form or collection of information is involved, and the use of the streamlined PRA process is inappropriate. The changes proposed here are not information collection. Instead, they go to the heart of a substantive eligibility requirement that is being finalized without sufficient public notice and comment.

U.S. immigration law is centered on the principle of family reunification. The Affidavit of Support (I-864) has been a statutory requirement since the 1996 passage of the Illegal Immigration

Reform and Immigrant Responsibility Act, which created the I-864 as a way of enforcing public charge inadmissibility under INA § 212(a)(4). The Affidavit of Support applies principally to family-based visa applicants, who have an absolute requirement to present a sufficient I-864 and supporting documentation at the time they are admitted. The sponsor on the I-864 is, by definition, a U.S. citizen, lawful permanent resident, or U.S. national.¹ The proposed changes have the effect of discouraging family immigration by creating onerous requirements on sponsors that are beyond what is legally required.

In addition, the proposed changes exceed the language of the statute and the regulations.² The changes in counting of household size, the requested information of unreliable, privately generated credit scores, in addition to IRS tax transcripts, the requirement of a notary signature, and the requirements of private bank account information from sponsors and household members are *ultra vires*, and should be stricken. At a minimum, the agency should have to undergo a meaningful public comment process when making such substantive changes by publishing proposed regulations for comment and deliberating on the public response. Placing such major changes in the guise of form revision is an attempt by the agency to avoid public scrutiny, which is not legally permissible.

II. Requiring In-Depth Bank Account Information and Requesting Credit Reports 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 that 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 spouses 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.

¹ INA § 213A(f)(1).

² INA §§ 212(a)(4)(D), 213A(a)(1); 8 C.F.R. § 213a.1.

In addition to being unnecessary and a privacy risk, the requirement of bank information is intimidating, and will discourage sponsors from completing the process. The law and regulations require that sponsor's income be verified, and that is already done through the submission of government-produced documentation of tax transcripts and W-2s. The additional requirement of bank account information, including account numbers and routing numbers, is hazardous for sponsors because of the many breaches of such information that can occur. Breaches have impacted millions of account holders in recent years and are not likely to stop in the near future.³

For these reasons, the requesting of credit scores in the proposed changes is also objectionable. Sponsors are already providing government-generated proof of income in their tax transcripts. The documentation produced by private credit bureaus is problematic for privacy reasons, and also because it can be inaccurate as often as one time out of five, according to government studies.⁴

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

Currently, the Form I-864 and related Forms I-864A and I-864EZ permit the sponsor (and household member(s), if applicable) to sign these forms under penalty of perjury. Under its new proposal, USCIS is proposing to require that these forms be notarized by a notary public in order for the forms to be properly executed. Such a requirement is inconsistent with federal law. Title 28, section 1746 of the U.S. Code permits federal forms, including Form I-864 and related Form I-864A and Form I-864EZ, to be executed under penalty of perjury. Furthermore, the agency's proposal to require that these forms must now be notarized by a notary public violates the Administrative Procedure Act by attempting to impose this new requirement through a form revision.

Moreover, the agency previously had to correct the I-864 to *remove* an initial 1997 requirement of signature in front of a notary in order to comply with federal law and did so by deleting the notary requirement.⁵

The requirement to have the form notarized by a notary public also 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 and household member(s) to have these forms notarized by a notary

³ The dangers of data breach are supported by recent reports. See New York Times, *Capital One Data Breach Compromises Data of over 100 Million* (July 29, 2019), concerning bank account holders. In another example, one of the largest private credit bureaus in the United States, Equifax, had a data breach impacting 147 million people that is still in the throes of litigation and legal settlements. Federal Trade Commission, *Equifax Data Breach Settlement* (Jan. 2020) <https://www.ftc.gov/enforcement/cases-proceedings/refunds/equifax-data-breach-settlement>.

⁴ See Federal Trade Commission, *Report to Congress under Sec. 319 of the Fair and Accurate Credit Transactions Act of 2003* (Dec. 2012). The FTC reports that as many as one in five consumers may have a material error in their credit reports, which are maintained by private agencies who do not have any direct responsibility to maintain the accuracy of the credit score.

⁵ See 71 Fed. Reg. 35739 (June 21, 2006), explaining that the I-864 would now be signed only under penalty of perjury because 28 U.S.C. § 1746 rendered notary signature unnecessary.

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 2019 novel coronavirus (COVID-19) pandemic.

IV. The Proposed Changes Alter the Computation of Household Size, Contradicting the Regulations

The proposed changes include language that would alter how many people are considered to be in the household by misconstruing the contractual obligation of a sponsor. The contractual obligations of a sponsor do not begin until the intending immigrant actually obtains permanent residence, but the proposed changes advise sponsors to count anyone that they have submitted a previous I-864 for, without acknowledging that there is no legal effect if that applicant did not become a permanent resident.

The current instruction reads, “If you have sponsored any other persons on Form I-864 or Form I-864EZ *who are now lawful permanent residents...*,” they must be counted in the household. The proposed change omits the “who are now lawful permanent residents” language, such that a sponsor would need to include someone for whom they may have signed an affidavit of support, whether or not it was later withdrawn or the individual was not approved for permanent residence, in which case there is no contractual obligation to support them. The regulations at 8 C.F.R. § 213a.1 are contradicted here, because they define “sponsored immigrant” for contractual obligation as, “any alien who was an intending immigrant, once that person has been lawfully admitted for permanent residence, so that the affidavit of support filed for that person under this part has entered into force.” The proposed change ignores that distinction and overcounts household size, thus mandating sponsors to have more income than legally required.

In conclusion, for all the reasons outlined above, I oppose the agency's proposed changes to Form I-864, Form I-864A, and Form I-864EZ. I urge USCIS to remove these requirements before the new editions of Form I-864, Forms I-864A, and Form I-864EZ are released to the public.

Sincerely,
Peggy Gleason
Senior Staff Attorney
Immigrant Legal Resource Center