*Submitted via email*

OMB USCIS Desk Officer

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**Re: Agency USCIS, OMB Control Number 1615-0116** - Public Comment Opposing Changes to Fee Waiver Eligibility Criteria, Agency Information Collection Activities: Revision of a Currently Approved Collection: Request for Fee Waiver FR Doc. 2019-06657 Filed 4-4-19; 84 FR 13687, 13687-13688

Dear Desk Officer:

I am writing on behalf of [organization name if applicable] in opposition to the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS) proposed changes to fee waiver eligibility criteria, OMB Control Number 1615-0116, published in the Federal Register on April 5, 2019. We are filing these comments by the deadline of May 6, 2019.

[INSERT paragraph describing your organization and why this is particularly urgent to you, plus the expertise that you have on issues raised. If you are an immigration legal service provider, consider describing a few of the client stories for persons who have applied for fee waivers, and why a fee waiver was needed. If the majority of your fee waiver requests are based on public benefits eligibility, so indicate. Consider describing your experience applying for fee waivers on the other two eligibility grounds of financial hardship and 150% of the poverty income guidelines. If you have specific data on the populations you serve, include it. Describe the types of applications or petitions that the majority of your clients who are fee waiver applicants file. If you are a state/local organization, consider including demographic information.]

**Background on Current Fee Waiver Guidance and Optional Form I-912, Request for Fee Waiver**

In 2010, after extensive collaboration with stakeholders, USCIS developed the Form I-912, Request for Fee Waiver, and then published the current fee waiver guidance. USCIS held public teleconferences and gathered extensive information from stakeholders before making these changes. The guidance replaced ten prior memos that contained contradictory instructions on fee waivers, and the new form for the first time allowed applicants a uniform way of applying for a fee waiver.

The purpose of the form and the new three-step eligibility analysis was to bring clarity and consistency to the fee waiver process. The analysis for fee waiver eligibility is:

Step 1: the applicant is receiving a means-tested benefit; or

Step 2: the applicant’s household income is at or below 150% of the poverty income guidelines at the time of filing; or

Step 3: the applicant suffers a financial hardship.

USCIS continued to consider applicant-generated fee waiver requests not submitted on the form. The standard for fee waiver eligibility for limited types of USCIS forms is described in the underlying regulation as making fee waivers available when “the party requesting the benefit is unable to pay the prescribed fee.”

**Current Revisions**

On September 28, 2019, USCIS published in the Federal Register a Notice of Agency Collection Activities; Revision of a Currently Approved Collection: Request for a Fee Waiver; Exemptions as a notice under the Paperwork Reduction Act (PRA). The notice stated that USCIS intended to eliminate the eligibility ground of receipt of a public benefit for the fee waiver, and alter the Form I-912 accordingly, but would continue to allow eligibility for financial hardship or income of 150% or less of the poverty income guidelines. The agency stated that since different income levels were used in different states to determine means-tested benefits, using that standard has resulted in inconsistent adjudications. No documentation or analysis was offered. The notice also stated that if USCIS finalized this change, it would eliminate the current USCIS Fee Waiver Guidance and replace it. No new proposed guidance was published for public comment. A total of 1,198 comments were filed in response.

On April 5, 2019, the current notice was published, stating that USCIS was proceeding with the change, eliminating public benefits receipt as an eligibility ground for the fee waiver, and that it was proceeding with the form revision. Fee waivers based on “poverty income guidelines threshold and financial hardship criteria” will apparently be retained, although no details are offered. The notice also announced that the current fee waiver guidance would be rescinded, and new guidance would be issued. There was no discussion of the 1,198 comments received in response to the September 28, 2018 notice.

**The PRA Process is Inappropriate for Substantive Guidance Changes.**

USCIS has proceeded in this process with a collection of information under the Paperwork Reduction Act (PRA) of 1995. 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 streamlined PRA process is inappropriate.

The changes proposed here are not information collection. Instead, they go to the heart of a substantive eligibility requirement. The proposed changes to the fee waiver eligibility criteria and accepted forms of evidence represent a fundamental change in the law that is being finalized without sufficient public notice and comment.

**Additional Burdens Created by the Revision**

**Eliminating eligibility for a means-tested benefit will place a significant burden on individuals applying for immigration benefits.**

The revision eliminates an individual’s ability to use proof of receipt of means-tested public benefits to demonstrate inability to pay the prescribed fee. Receipt of a means-tested benefit is sufficient evidence of inability to pay, which is what 8 C.F.R. § 103.7(c) requires. USCIS fails to provide any evidence that accepting proof of receipt of a means-tested benefit has led the agency to grant fee waivers to individuals who were able to pay the fee. This proof is by far the most common and straightforward way to demonstrate fee waiver eligibility as applicants have already proven current receipt of benefits by providing a copy of the official eligibility letter, or Notice of Action, from the government agency administering the benefit.

USCIS determined, in making these revisions, that the various income levels used in states to grant a means-tested benefit result in inconsistent income levels being used to determine eligibility for a fee waiver. Consequently, a fee waiver may be granted for one person who has a certain level of income in one state but denied for a person with that same income who lives in another state.

However, the underlying legal standard for a fee waiver is ability to pay, according to the regulations.

Ability to pay isn't the same for two people with the exact same income who live in two different states with totally different costs of living. If people with the same income living in rural Mississippi and in New York City must have the same income to qualify for a fee waiver, that is arbitrary and cannot possibly be a fair measure of ability to pay.

* [INSERT local cost of living data to help make this point.]

Individuals who have already passed a thorough income eligibility screening by government agencies should not have to prove their eligibility all over again to USCIS. By eliminating receipt of a means-tested benefit to show eligibility, the government is adding an additional burden on immigrants who already are facing the economic challenge of paying for application fees. USCIS is taking the indefensible position that it cannot tell which public benefit programs are means-tested and which ones are not. Given that the largest means-tested programs are federal program such as Medicaid or SNAP, this assertion is plainly a pretense for an action that has no real basis in fact.

These proposed changes will discourage eligible individuals from filing for both fee waivers and immigration benefits and place heavy time and resource burdens on individuals applying for fee waivers.

**The revision will place a time and resource burden on individuals applying for fee waivers.**

By only accepting fee waiver requests submitted using Form I-912, USCIS will limit the availability of fee waivers. Applicants must continue to be permitted to submit applicant-generated fee waiver requests (i.e., requests that are not submitted on Form I-912, such as a letter or an affidavit) that comply with 8 C.F.R. § 103.7(c), and address all of the eligibility requirements.

Eliminating the currently accepted applicant-generated fee waiver requests places an additional and unnecessary burden on applicants to locate, complete, and submit the Form I-912, when a self-generated request that provides all of the necessary information can equally meet the requirements.

Under the proposed changes, the applicant must procure additional new documents including a federal tax transcript from the Internal Revenue Service (IRS) to demonstrate household income at less than or equal to 150% of the federal poverty guidelines. Currently, applicants can submit a copy of their most recent federal tax returns to meet this requirement. The government does not provide any reason as to why a transcript is preferred over a federal tax return. Federal tax returns are uniform documents and most individuals keep copies on hand. The proposed requirement will place an additional burden on individuals for more documents and does not account for those individuals who might need assistance obtaining a transcript due to lack of access to a computer or for delays involving delivery of mail.

NOTE: USCIS is taking the explicit position that the changes to the form are not an “excessive burden.” Make the case here that it is an excessive burden on individuals. Describe the time and resource impact these changes will have on applicants. Include any additional information from your personal experience or work. You may want to include or discuss:

* Evidence that directly contradicts assertions made by the proposed change (e.g. USCIS asserts that the estimated time burden per response is 1.17 hours, but your experience helping applicants file fee waivers has shown you that proving annual income takes significantly more time than demonstrating receipt of means-tested benefit);
* Circumstances and situations that would warrant different treatment for different parties (e.g. you work with different populations of indigenous language speakers living in rural areas who should not have to submit IRS tax transcripts because they do not have easy access to the internet and would not be able to request an IRS tax transcript without assistance; or, you work with persons with disabilities who for whom this process would be extremely burdensome);
* All evidence of “excessive burden” to your clients;
* Evidence that directly contradicts USCIS’ statement that “many applicants have requested a fee waiver based on the receipt of public benefits that are not means tested.” If 100% of the applicants your organization assists with fee waivers receive benefits from a major public benefit programs like Medicaid, SNAP, etc., this would be helpful data.

**This revision will negatively impact the ability of individuals, especially those who are vulnerable, to apply for immigration benefits for which they are eligible.**

The filing fee associated with various immigration benefits can be an insurmountable obstacle for an immigration benefit or naturalization application. Any opportunity to mitigate the costs associated with filing should be designed to ease, rather than exacerbate, these obstacles.

Increasing the burden of applying for a fee waiver will further limit access to naturalization for otherwise eligible lawful permanent residents. The naturalization fee has gone up 600% over the last 20 years, pricing many qualified green card holders out of U.S. citizenship. USCIS asserts, without any evidence to back up its claim, that individuals can merely “save funds” and apply later if they do not have the funds to apply today. This both fails to consider the harm to individuals resulting from the delay in applying and unjustifiably assumes individuals applying for fee waivers have disposable income that could be set aside.

The changes would harm the most vulnerable populations.

More than 94% of domestic violence survivors also experienced economic abuse, which may include losing a job or being prevented from working. Fee waivers are critical to ensuring survivors can access relief. The changes will harm survivors of domestic violence, sexual assault, human trafficking, and other crimes who are unable to meet the stricter evidentiary requirements proposed to prove eligibility and go against the evidentiary standards applicable to applications for relief filed by survivors.

The changes would also harm people with disabilities. Thirty percent of adults receiving government assistance have a disability. For most, that disability that limits their ability work. Eliminating the ability to use receipt of a mean-tested benefit as proof of fee waiver eligibility, or any new requirements that make the process more complicated, will further burden those with disabilities in accessing an immigration benefit for which they are eligible.

NOTE: Include any additional information from your personal experience or work. You may want to include or discuss:

* How the current filing fees are cost prohibitive for some/many of the individuals you work with;
* How the people you serve benefit from fee waivers and the impact of a change in immigration status including naturalization can have on their upward trajectory;
* Provide specific examples of how your clients would struggle if they are not able to get a fee waiver.
* Provide specific examples of clients who would be harmed if they had to try to save funds for the filing fee and apply in the future. Describe the consequences of delay. The harm could be economic, physical, or any other harm they may suffer.

**The changes will increase the inefficiencies in processing fee waiver requests while further burdening government agencies.**

USCIS claims the changes will standardize, streamline, and expedite the process of requesting a fee waiver by clearly laying out the most salient data and evidence necessary to make the decision. Instead, these proposed changes will slow down an already overburdened system, delaying and denying access to immigration benefits or naturalization for otherwise eligible immigrants. USCIS adjudicators will be forced to engage in a time-consuming analysis of voluminous financial records, rather than relying on the professional expertise of social services agencies who determine eligibility for means-tested benefits.

This revision also places an unnecessary burden on the IRS and fails to address whether the IRS is prepared to handle a sudden increase in requests for documents. Under the revision, almost every person who applies for a fee waiver based on their annual income must also request the required documentation from the IRS in order to prove their eligibility.

NOTE: Include any additional information from your personal experience or work. You may want to include or discuss:

* The impact of delays in the adjudication of Form I-912 would have on applicants;
* Any experiences you have had of arbitrary/unwarranted denials of I-912 applications filed on the basis of income at or below 150% of poverty income guidelines or on the basis of hardship.
* Any experiences you have procuring documents from the IRS or other non-immigration agencies that have delayed your ability to timely file applications.

**The changes will place a time and resource burden on legal service providers and reduce access to legal services, especially in under-resourced locations.**

The revisions detailed above will increase the burden on non-profit legal service providers and limit access to immigration legal services for individuals in need. In addition, it will make it harder for legal service providers to help immigrants who cannot afford the fee in applying for immigration benefits and naturalization.

Fee waiver preparation for low-income immigrants demands hours of work from legal services providers. The fee waiver based on receipt of a means-tested benefit is efficient in that the provider knows which document will be sufficiently probative for USCIS. The other grounds for a fee waiver, financial hardship and a threshold of the poverty income guidelines, are much less clear, and require far more time to gather sufficient documentation.

Include any additional information from your personal experience or work. You may want to include or discuss:

* How these changes would increase your workload and how that would impact the number of clients you serve, the services you provide, programs you are able to fund, etc. Describe the amount of time it takes you to prepare a successful waiver based on 150% or financial hardship vs. a waiver based on a public benefit.
* If you engage in workshops, describe the impact of the proposed change on your organization’s ability to conduct this work.
* Describe any potential financial impact on your organization from these changes.

Currently, non-profit immigration legal service providers, including those in remote areas of the United States, organize one day workshops as the most efficient model to help eligible applicants apply for immigration benefits and naturalization. Workshops are helpful to both applicants and USCIS because it allows for a reduction in errors and minimizes the fraudulent provision of immigration services. With the proposed changes to the fee waiver form, it will become harder or even impossible for non-profit legal service providers to complete applications in the workshop setting. Organizations may stop providing assistance with fee waivers in the workshop setting. This would cut off access to legal support and immigration relief for vulnerable populations, particularly for those in remote or other hard-to-reach areas.

**Conclusion**

[NOTE: We encourage you to summarize here the overall impact that the loss of a fee waiver based on public benefits would have on your clients and your program).

USCIS should review the development of the current fee waiver standards and engage in a reasoned analysis of how it arrived at its current proposal. Nothing in the current notice indicates an understanding of how and why the current form and guidance were created in 2010, which is critical to planning any changes. The Form I-912 request for fee waiver with its three-step eligibility formula, and the 2011 guidance, were specifically created to simplify the fee waiver adjudication process. The eligibility for receipt of a means-tested benefit was the linchpin of that simplified process.

We urge USCIS, rather than implement the revision, to perform public outreach to gather information, and then engage in full notice and comment procedures on all substantive changes proposed in order to ensure the fair and efficient adjudication of immigration benefits and naturalization.

Sincerely yours,

[Insert name and contact information]