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May 6, 2019

Submitted via email

OMB USCIS Desk Officer

dhsdeskofficer@omb.eop.gov

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 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 fee waiver eligibility criteria, OMB Control Number 1615-0116, published in the Federal Register on April 5, 2019.

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. The ILRC has produced legal trainings, practice advisories, and other materials pertaining to the fee waiver.

The ILRC also leads the New Americans Campaign, a national non-partisan effort that brings together private philanthropic funders, leading national immigration and service organizations, and over two hundred local services providers across more than 20 different regions to help prospective Americans apply for U.S. citizenship. We have extensive experience with fee waivers and have helped hundreds of thousands of lawful permanent residents with the naturalization process. Through our extensive networks with service providers, immigration practitioners, and naturalization applicants, we have developed a profound understanding of the barriers faced by low-income individuals seeking to obtain immigration benefits or naturalization and strongly oppose the proposed changes to the fee waiver eligibility criteria.

As the lead organization for the New Americans Campaign, the ILRC receives and re-grants substantial philanthropic dollars to local immigration legal services providers across the United States who help lawful permanent residents (LPRs) apply for naturalization. Our local partners have helped more than 400,000 LPRs complete naturalization applications, and for more than 40% of naturalization applications our partners have also helped LPRs complete fee waiver requests. The majority of these requests use receipt of means-tested benefits to establish fee waiver eligibility. The proposed changes to the fee waiver form would have immediate detrimental effects on our ability to ensure the New American Campaign is able to meet its goals and would cause immediate harm to the service providers who participate in the New Americans Campaign and to the LPRs we help every day.

The ILRC is also a leader in VAWA, U, and T immigration relief for survivors, coordinating taskforces and producing trusted legal resources including webinars, trainings, and manuals such as *The VAWA Manual: Immigration Relief for Abused Immigrants*, *The U Visa: Obtaining Status for Immigrant Victims of Crime* and *T Visas: A Critical Option for Survivors of Human Trafficking*. Although USCIS proposes allowing these applicants to submit other documentation and an explanation of their inability to provide required proof of income, eliminating receipt of means-tested benefits as proof of inability to pay an immigration filing fee will still place an undue burden on these applicants. Most will not be able to comply with the required evidence in support of a fee waiver request, and thus will have to rely on USCIS acceptance of alternative evidence and explanation for failure to obtain the required documentation, even as these applicants are most often in need of fee waivers. Furthermore, in the same way that “any credible evidence” is acceptable for victims of domestic abuse, criminal activity and human trafficking to show their eligibility for VAWA, U nonimmigrant status and T nonimmigrant status respectively, informal, “applicant-generated” fee waiver requests have been acceptable for these types of petitions. Changing the process to require the submission of a Form I-912 would be an undue burden on the survivors applying for these forms of immigration relief, the service providers who assist them, and the ILRC who would need to revise all of our training and written resources to reflect these new, stricter requirements.

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.¹ USCIS held public teleconferences and gathered extensive information from stakeholders before making these changes.² The guidance

¹ USCIS Policy Memorandum, PM-602-0011.1, Fee Waiver Guidance as established by the Final Rule of the USCIS Fee Schedule: Revisions to the Adjudicator’s Field Manual (AFM) Chapter 10.9, AFM Update AD11-26 (March 13, 2011) [hereinafter USCIS Fee Waiver Guidance].

² USCIS, Executive Summary, USCIS Stakeholder Engagement: Fee Waiver Form and Final Rule (January 5, 2011), <https://www.uscis.gov/sites/default/files/USCIS/Outreach/Public%20Engagement/National%20Engagement%20Pa>

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

[ges/2010%20Events/November%202010/Executive%20Summary%20-%20Fee%20Waiver%20Form%20and%20Final%20Fee%20Rule.pdf](#) (accessed April 8, 2019) and DHS CIS Ombudsman Teleconference: Fee Waivers: How are they working for you (September 30, 2009), <https://www.uscis.gov/archive/archive-outreach/cis-ombudsman-teleconference-fee-waivers-how-are-they-working-you-september-30-2009> (accessed April 8, 2019), in which USCIS stated that it was developing a fee waiver form to clarify and streamline the fee waiver process, that the form would be published first for stakeholder comment, and that USCIS would use receipt of means-tested benefits as a clear eligibility ground for a fee waiver, "because it represents another agency's independent assessment of your economic circumstances," another effort to lend clarity to the process.

with the form revision. USCIS continues to disingenuously refer to the elimination of means-tested benefits in support of a fee waiver request as a “reduction” in the evidence required,³ when in fact what it does is reduce the ways in which an applicant can prove inability to pay, as proof of public benefits was never required, but merely an option that many applicants utilized. 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 only summary reference in the April 5, 2019 notice of the 1,198 comments received in response to the September 28, 2018 notice, simply stating that “USCIS... is proceeding with the form revision after considering the public comments.”⁴

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 is unnecessary and unfounded.

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 in accordance with the regulations. 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. Receipt of means-tested benefits is by far the most common and straightforward way to demonstrate fee waiver eligibility because applicants can show they have already been screened for income-based eligibility by simply providing a copy of the official eligibility determination letter, or Notice of Action, from the government agency administering the means-tested benefit to confirm this.

³ See 84 FR 13687 (Apr. 5, 2019) (“The proposed revision would *reduce* the evidence required for a fee waiver...”)
(emphasis added).

⁴ 64 FR 13867 (Apr. 5, 2019).

USCIS argued, in making these revisions, that the various income levels used by 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.

USCIS takes the position that permitting fee waivers based on the receipt of public benefits leads to inconsistent results because of “the various income levels used in states to grant a means-tested benefit.” This is a spurious argument for many reasons. First, the standard for a fee waiver is “ability to pay,” which is not a standard that requires all fee waiver recipients to have identical incomes. Indeed, one would expect individuals living in high-cost areas of the United States to have less disposable income and therefore a lower ability to pay an immigration fee than individuals with identical incomes living in low-cost areas of the United States. The approach USCIS takes here, which is to require identical income levels regardless of factors such as cost of living, is arbitrary and cannot possibly be a fair measure of “ability to pay.”

By contrast, states administering public benefit programs have a proven track record of identifying individuals who have insufficient income to cover the full cost of essential needs such as health care, food, or shelter. Although income eligibility rules for public benefit programs may vary slightly between states, the variation is insufficient to justify the position USCIS is taking. Indeed, USCIS has provided no data to back up its claims. Programs such as Medicaid and SNAP operate under strict rules that have created a consistent system that every state in the nation has found sufficient to adjudicate eligibility for these major programs. Individuals who qualify for public benefits have, by definition, a lack of disposable income. They are clearly individuals who are appropriately eligible for immigration fee waivers. Moreover, they have been fully vetted by government agencies whose business it is to determine income-based program eligibility. For USCIS to take the position that receipt of a public benefit is not a fair proxy of inability to pay, with no evidence to back up its claim, is arbitrary and capricious.

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 application fees that have risen exponentially in recent years. 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. Indeed, the very reason USCIS provided for why it created a fee waiver form that included

receipt of a means-tested benefit as a way to establish inability to pay was “because it represents another agency’s independent assessment of [the individual’s] economic circumstances.”⁵

Finally, USCIS cites the fee waiver approval rate for fiscal year 2017 as a basis for “inconsistencies” necessitating elimination of means-tested benefits to prove fee waiver eligibility,⁶ rather than providing any evidence of actual inconsistencies in adjudicating fee waivers. This shows that USCIS’ true aim with this proposed revision is to reduce the number of approved fee waivers, rather than reduce “inconsistencies,” because the percentage approved has nothing to do with consistency or inconsistency in adjudication.

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, thereby limiting the availability of fee waivers for many individuals.

Required use of Form I-912 places an unacceptable time and resource burden on individuals

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. Indeed 8 C.F.R. § 103.7(c)(2) states, “To request a fee waiver, a person requesting an immigration benefit must submit *a written request* for permission to have their request processed without payment of a fee with their benefit request. The request must state the person’s belief that he or she is entitled to or deserving of the benefit requested, the reasons for his or her inability to pay, and evidence to support the reasons indicated.” (Emphasis added.)

Eliminating the currently accepted applicant-generated fee waiver request 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.

⁵ DHS CIS Ombudsman Teleconference: Fee Waivers: How are they working for you (September 30, 2009), <https://www.uscis.gov/archive/archive-outreach/cis-ombudsman-teleconference-fee-waivers-how-are-they-working-you-september-30-2009> (accessed April 8, 2019).

⁶ USCIS Responses to Public Comments Received on the 60-day Federal Register Notice, “Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions,” 83 FR 49120 (Sept. 28, 2018) at 3 (“In FY 2017, USCIS approved 588,732 or 86% of these fee waiver requests. To increase the consistency in the shifting of the cost of fee waivers to those who pay fees, USCIS has decided to apply more consistent standards of income and financial hardship for the purposes of determining inability to pay a fee.”), available at <https://www.aila.org/>, AILA Doc. No. 19040834 (posted Apr. 10, 2019).

Requiring transcripts of tax returns places an unacceptable time and resource burden on individuals

In addition to mandating use of the Form I-912, under the proposed changes the applicant must also procure additional new documents including a federal tax transcript from the Internal Revenue Service (IRS) to demonstrate household income less than or equal to 150% of the federal poverty guidelines. This, too, will limit availability of fee waivers for many applicants. Currently, applicants can submit a copy of their most recent federal tax returns to meet this requirement. The government does not provide any reason why a transcript is preferred over a federal tax return. Federal tax returns are uniform documents and most individuals keep copies on hand. In contrast, no one has a tax transcript unless they take the additional step of requesting one, in this instance solely to request a fee waiver. Requiring tax transcripts rather than accepting copies of tax returns and pay statements makes the entire process of proving eligibility for a fee waiver based on income more onerous. There are multiple types of tax transcripts,⁷ and many pieces of information necessary to request transcripts,⁸ which may confuse and even prevent individuals from obtaining tax transcripts. For instance, to request a tax transcript online, an individual must not only provide their Social Security Number, date of birth, filing status, and mailing address from their latest tax return, but also have access to an email account, their personal account number from a credit card, mortgage, home equity loan, home equity line of credit or car loan, and a mobile phone with their name on the account.⁹ While a request for tax transcript by mail requires less information, obtaining transcripts by mail takes a minimum of five to ten calendar days, delaying what should be a straightforward and easy process. Moreover, for applicants who succeed in obtaining a tax transcript, USCIS leaves itself discretion, with no criteria or limitations, to reject the transcript and request a certified transcript, causing further delays in the adjudication of the underlying immigration petition or naturalization application. 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.¹⁰

The two remaining bases for a fee waiver request require more information and evidence than the means-tested benefits basis, placing an unacceptable time and resource burden on individuals

Finally, narrowing the range of ways an applicant can prove inability to pay, from three options to two— income at or below 150% of the federal poverty guidelines or financial hardship—will also increase the

⁷ See *Transcript Types and Ways to Order Them*, IRS, <https://www.irs.gov/individuals/tax-return-transcript-types-and-ways-to-order-them>.

⁸ See *Welcome to Get Transcript: What You Need*, IRS, <https://www.irs.gov/individuals/get-transcript>.

⁹ See *id.*

¹⁰ Although there is an option to download tax transcripts from the IRS website, this appears to require a Social Security Number, so many will need to resort to having their tax transcripts mailed to them instead. See <https://www.irs.gov/individuals/get-transcript>.

burden on applicants in terms of information they must provide on the Form I-912 and required evidence in support because the remaining two options involve far more information and evidence than a fee waiver based on receipt of means-tested benefits.

An applicant requesting a fee waiver based on receipt of means-tested benefits need only submit a copy of the official eligibility determination letter, or Notice of Action, from the government agency administering the benefit to prove such eligibility. On the Form I-912, the section on means-tested benefits as a basis for requesting a fee waiver spans less than half a page, simply requiring information on who receives the benefit (and their relationship to the fee waiver requester), the agency providing the benefit, type of benefit, and dates the benefit covers—all information readily available from the benefits determination letter.

In contrast, an applicant requesting a fee waiver based on income must prove income (or lack thereof) and provide information spanning nearly three pages on the proposed revised Form I-912, which includes information on their employment status, household size and income, and detailed dollar amounts of any additional income received such as parental support, spousal support, child support, educational stipends, royalties, pensions, unemployment benefits, Social Security benefits, and veteran's benefits.

The evidence and information required for a fee waiver request based on financial hardship is similarly onerous and far more time-intensive than requesting one based on means-tested benefits. To request a fee waiver based on financial hardship, the requester will have to fill out nearly a page of information on the revised Form I-912 just for this basis, including detailing monthly expenses and liabilities (and providing proof of these expenses and liabilities, which means gathering and attaching copies of utility bills, medical bills, credit card bills, receipts for money spent on food and rent, commuting costs, etc.).

Both these alternative methods for proving inability to pay in support of a fee waiver request are far more arduous than submitting proof an applicant receives means-tested benefits. Further, to the extent that USCIS maintains this will not take more time or effort because applicants will be “merely providing [the] same documentation to USCIS,”¹¹ that they provided to the benefit-granting agency, this is inaccurate for a number of reasons. One, USCIS will want to see recent evidence, rather than older copies of utility bills, medical bills, credit card bills, receipts for money spent on food and rent, commuting costs, etc. Therefore, the applicant will have to go through the same time-intensive process yet again of collecting all the varied proofs of income or expenses and liabilities that they have already collected to prove their eligibility for a means-tested benefit. Two, different evidence is required for means-tested benefits than USCIS will be requesting. For instance, many means-tested benefits require

¹¹ USCIS Responses to Public Comments Received on the 60-day Federal Register Notice, “Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions,” 83 FR 49120 (Sept. 28, 2018) at 4, available at <https://www.aila.org/>, AILA Doc. No. 19040834 (posted Apr. 10, 2019).

applicants to provide pay stubs and bank statements. USCIS will only accept pay stubs *in addition to a tax transcript*, for those who have experienced a salary or employment change since they filed their income taxes. Other means-tested benefits require copies of federal income tax returns, which USCIS will also no longer accept.

USCIS appears dismissive of claims that the fee waiver revisions will increase the burden on applicants and chooses to prefer, without substantiation, its own view that the burden of this change will be minimal or non-existent.¹² In assessing claims of increased burden and whether such burden is justified, USCIS has failed to engage in a reasoned analysis and meaningfully address comments and concerns about increased burden on applicants, as required as part of this process.

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 to applying for naturalization or another immigration benefit. 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 increased by 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.¹³ 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.

¹² See, e.g., *USCIS Responses to Public Comments Received on the 60-day Federal Register Notice, “Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions,” 83 FR 49120 (Sept. 28, 2018)* at 1 (“USCIS understands that this change will require people to obtain different documentation... However, applicants may still request fee waivers. USCIS does not believe the changes are an excessive burden on respondents.”) (emphasis added); at 4 (“Thus, the additional burden should be minimal. In any event, DHS has considered the burden on applicants and determined that the benefits of the policy change exceed the potential small burden increase.”), available at <https://www.aila.org/>, AILA Doc. No. 19040834 (posted Apr. 10, 2019).

¹³ *USCIS Responses to Public Comments Received on the 60-day Federal Register Notice, “Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions,” 83 FR 49120 (Sept. 28, 2018)* at 5, available at <https://www.aila.org/>, AILA Doc. No. 19040834 (posted Apr. 10, 2019).

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. As USCIS has indicated, greater “consistency” in fee waiver adjudication seems to correlate with lower rates of approval,¹⁴ and this will harm survivors of domestic violence, sexual assault, human trafficking, and other crimes who are least able to afford immigration filing fees while being most in need of protection by our immigration laws.

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

The changes will increase 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 and varied financial records in support of an income or financial hardship showing, rather than relying on the professional expertise of social services agencies who routinely 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.

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.

¹⁴ See *USCIS Responses to Public Comments Received on the 60-day Federal Register Notice, “Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions,” 83 FR 49120 (Sept. 28, 2018)* at 3, available at <https://www.aila.org/>, AILA Doc. No. 19040834 (posted Apr. 10, 2019).

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. An experienced advocate can help an applicant complete a fee waiver request on the basis of receipt of a means-tested benefit in 10 minutes. Other modes of establishing inability to pay require ten or twenty times more work and time, for both the advocate and the applicant. DHS grossly underestimates the time burden involved in gathering the documentation needed and engaging in income calculations.

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 increasing access to qualified immigration attorneys or accredited representatives 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 with limited access to reputable immigration assistance.

The changes will also directly impact the ILRC and our work. The ILRC provides numerous in-person and webinar trainings on many topics including fee waivers. Once the proposed changes to the fee waiver process take effect, the ILRC will have to plan and present additional webinars and other trainings to alert and re-train the field of immigration legal advocates in how to screen, prepare, and file fee waivers in light of such a significant change, as well as notifying and educating the immigrant community at-large. The ILRC will also have to dramatically re-vamp our publications on fee waivers, including manuals and practice advisories, to reflect this major change to the fee waiver process, eliminating one of three grounds for requesting a fee waiver, after nearly a decade during which fee waivers have remained unchanged.

With respect to our leadership of the New Americans Campaign, the proposed change undermines the service model that is at the heart of our work and the best practices in delivering naturalization legal services to large numbers of LPRs who need the help—models we have gathered and shared with local organizations throughout the United States. The philanthropic funding we receive is predicated on our ability to engage in high impact work. Therefore, in addition to the harm the form changes will create for immigrants and the organizations that serve them, the changes will also result in financial harm to the ILRC.

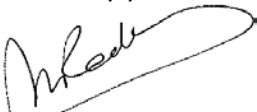
Conclusion

The proposed form change will harm the most vulnerable immigrants and naturalization applicants, with no reasonable justification. The change will create new barriers to applying for immigration relief, making the regulatory provision for fee waivers a distant promise, inaccessible to most applicants including many for whom the fee waiver process was intended—deserving individuals with a substantiated inability to pay. The proposed changes will make it significantly harder for non-profit legal service providers to help eligible applicants secure the fee waivers to which they are entitled. Finally, the proposed changes will further burden adjudication of immigration petitions and naturalization applications at USCIS, an agency already plagued by well-documented adjudication backlogs across all types of cases.¹⁵

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 retain the current I-912 form and continue accepting applicant-generated requests, and 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,



Melissa Rodgers
Director of Programs
Immigrant Legal Resource Center

¹⁵ AILA Policy Brief: USCIS Processing Delays Have Reached Crisis Levels Under the Trump Administration. AILA Doc. No. 19012834, January 30, 2019, available at <https://www.aila.org/infonet/aila-policy-brief-uscis-processing-delays> (accessed May 3, 2019).