

HOUSTON IMMIGRATION
LEGAL SERVICES COLLABORATIVE

OMB USCIS Desk Officer
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529-2140

Submitted via email: 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

Dear Desk Officer:

We are writing on behalf of the Houston Immigration Legal Services Collaborative (“HILSC”) 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.

The Houston Immigration Legal Services Collaborative is a collaborative organization of over fifteen nonprofit immigration legal services providers in the Greater Houston area, as well as over thirty social services agencies and advocacy organizations serving Houston’s immigrant communities. Our staff have years of experience representing immigrants before USCIS in a variety of immigration matters. Virtually all of the immigrants our staff members have represented before USCIS are low-income, with incomes below 187.5%, 150%, or 125% of the Federal Poverty Guidelines, depending on the requirements of the nonprofit agencies.

HILSC opposes the proposed revisions to Form I-912 because the PRA process is inappropriate for substantive guidance changes and the revision creates too many burdens. Eliminating eligibility for a means-tested benefit will place a significant burden on individuals applying for immigration benefits, and will prevent many qualified, low-income immigrants from submitting applications for benefits they otherwise qualify for. Particularly vulnerable populations, such as victims of domestic violence, disabled individuals, and victims of natural disasters are disproportionately impacted.

Allowing fee waivers based on the receipt of a means-tested benefit, along with the other two methods of qualifying permitted by the I-912 in its current form, allows USCIS to consider the nuances of individual immigrants’ financial situations that cannot be properly considered through income-based or economic-hardship-based fee waivers alone. Receipt of a means-tested benefit more accurately reflects an individual’s *current* situation than copies of tax returns. Most states, including Texas, require that an individual participating in a means-tested benefit update income and financial information with the state public benefits agency as soon as that information changes, and they take into consideration more specific, individualized circumstances that may not be reflected in tax returns or current paystubs alone. Many immigrants may be unable to obtain tax transcripts or a Verification of Non-filing Letter and thus will be unable to demonstrate that they qualify for a fee waiver. Furthermore, the changes will increase the inefficiencies in processing fee waiver requests while further burdening government agencies.

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 enough 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.

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.

Determining whether an immigrant qualifies for a fee waiver based on the receipt of a means-tested benefit is an appropriate method for determining eligibility because it may more accurately reflect their current financial situation than income tax returns. In Texas, recipients of means-tested benefits such as Supplemental Nutrition Assistance Program ("SNAP") must report changes in income or other financial circumstances within ten days.¹ Additionally, many elements of a person's financial situation beyond income are considered when determining their eligibility (or continued eligibility) for means-tested benefits. For example, in Texas, recipients must report changes in: sources of income, household composition, ownership of a licensed vehicle, wage rate or status for all employed household members, residence and associated changes in shelter costs

¹ Texas Health and Human Services, Texas Works Handbook, Part B-622 General Policy, *available at* <https://hhs.texas.gov/laws-regulations/handbooks/twh/part-b-case-management/section-600-changes#B622>

such as rent/mortgage and utilities, changes in unearned income if the amount changes by more than \$50, and various other income changes.² As a result, the receipt of means-tested benefits in Texas means that the state has determined eligibility based on information that is as little as ten days old and is significantly more nuanced than the previous year's tax returns.

Furthermore, in Texas, applicants for SNAP and other means-tested benefits must generally recertify their eligibility every six months.³ Thus, a current means-tested benefits letter is a much more current view of an applicant's current financial situation than tax returns which could reflect income from as much as twelve to sixteen months prior to the application. This is particularly important to Houston-area applicants who are still recovering from Hurricane Harvey and whose financial situations may have changed dramatically from 2017 to 2018.

A study by the Kaiser Family Foundation and the Episcopal Health Foundation of the experiences of immigrants under Harvey shows that immigrants were disproportionately affected by the hurricane.⁴ For instance, about three-quarters (74 percent) of Houston area immigrants were affected by some type of property damage to their home or vehicle and/or some form of job or income loss, compared to 63 percent of native-born residents.⁵ 64% reported employment and income losses with more than half of immigrant households in Houston containing workers whose overtime or regular hours were cut back at work – twice as many as the native-born population.⁶ In addition, limiting the possible grounds for a fee waiver to exclude receipt of a means-tested benefit is not an efficient use of USCIS's time. Through the eligibility for a means-tested benefit process, the state of Texas conducts a microscopic view of an applicant's financial status. For example, the benefit-granting agency must review all liquid resources, such as cash, bank accounts, and stocks or bonds, as well as determining the equity value of all non-liquid resources, such as vehicles, buildings, land, or other property.⁷ This is a nuanced evaluation that takes a significant amount of time, and it is not economical for USCIS to repeat work that has already been completed by individual states.

Eliminating eligibility for a fee waiver based on receipt of a means-tested benefit will lead to income-eligible applicants receiving erroneous denials, or not applying for immigration benefits in the first place, because their previous years' tax returns indicate that they are not eligible when their current financial situations would render them eligible.

The USCIS Federal Register notice indicates that one reason for eliminating the receipt of a means-tested benefit from the fee waiver eligibility criteria is because different states have different

² Texas Health and Human Services, Texas Works Handbook, Part B-621 General Policy, *available at* <https://hhs.texas.gov/laws-regulations/handbooks/twh/part-b-case-management/section-600-changes#B621>

³ Texas Health and Human Services, Texas Works Handbook, Part A-2324 General Policy, *available at* <https://hhs.texas.gov/laws-regulations/handbooks/twh/part-a-determining-eligibility/section-2300-case-disposition>

⁴ Bryan Wu, Liz Hamel, Mollyann Brodie, Shao-Chee Sim, and Elena Marks, "Hurricane Harvey: The Experiences of Immigrants Living in the Texas Gulf Coast," (March 2018), Kaiser Family Foundation and the Episcopal Health Foundation available https://www.episcopalhealth.org/files/9515/2148/3999/Hurricane_Harvey_-_The_Experiences_of_Immigrants_Living_in_the_Texas_Gulf_Coast.pdf.

⁵ *Id.*

⁶ *Id.*

⁷ Texas Health and Human Services, Texas Works Handbook, Part A-1210 General Policy, *available at* <https://hhs.texas.gov/laws-regulations/handbooks/twh/part-a-determining-eligibility/section-1200-resources>

income thresholds to determine eligibility for a means-tested benefit. While this is sometimes true, the differences are reasonable, taking into account costs of living and other local factors (which the Federal Poverty Guidelines do not do) and the differences are generally not large.

For example, SNAP benefits, which are a means-tested benefit and which many clients of HILSC member organizations have used under the current I-912 to obtain a fee waiver, use the same income requirements across the United States – eligibility is set at 130% of the Federal Poverty Guidelines for gross income and 100% of the Federal Poverty Guidelines for net income.⁸ The only exceptions are Alaska and Hawaii, which have different Federal Poverty Guidelines. This demonstrates that USCIS’s stated goal of equalizing adjudications for residents of different states is not well-served by this proposed rule change.

Benefits that are different on a state level, such as Temporary Assistance for Needy Families (TANF) do vary between states, but these differences are often small and take into account differing costs of living, and virtually all states limit TANF eligibility to families below 100% of the Federal Poverty Guidelines. For example, a Congressional Research Service examination of state TANF benefits found that the maximum earnings level for applicants in all states except Wisconsin was below the Federal Poverty Guidelines; a TANF recipient in Wisconsin could earn up to 115% of the Federal Poverty Guidelines in very limited circumstances.⁹ Even though the eligibility guidelines for various means-tested benefits may vary between states, these variations are reasonable and indicate that the person is low income. USCIS should not eliminate the availability of fee waivers based on the receipt of a means-tested benefit based on differing requirements between states. 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

⁸ USDA Food and Nutrition Service, Supplemental Nutrition Assistance Program (SNAP) FAQ, *available at* <https://www.fns.usda.gov/snap/eligibility#SNAP%20Excess%20Shelter%20Costs%20Deduction>

⁹ Temporary Assistance for Needy Families (TANF): Eligibility and Benefit Amounts in State TANF Cash Assistance Programs, Congressional Research Service, July 22, 2014, *available at* <https://fas.org/sgp/crs/misc/R43634.pdf>

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. Not all immigrants can obtain transcripts of their tax returns or a verification of non-filing letter. The requirement that fee waiver applicants using income below 150% of the federal poverty guidelines to qualify submit either copies of their tax transcripts or a verification of non-filing letter is extremely burdensome and will place some immigrants in an impossible situation. There is no reason why a copy of an applicant's tax returns, the current evidence required, is insufficient.

In order to request transcripts, applicants must have their Social Security numbers or Individual Tax Identification Numbers (ITIN).¹⁰ Not all applicants for fee waivers have a Social Security number or ITIN. For example, many U visa applicants, who request fee waivers for the I-192 Application for Advance Permission to Enter as Nonimmigrant, do not have Social Security numbers or ITINs. Furthermore, this requirement will significantly burden survivors of domestic violence, who cannot obtain these transcripts without their spouse's consent¹¹ or having them sent via mail to the address on file,¹² which is likely to be the residence they shared with the abuser.

Even applicants who are not survivors of domestic violence may have difficulty obtaining transcripts or verification of non-filing. They may not have a credit card, mortgage, home equity loan, or other loans, which are required to obtain a transcript online.¹³ They may also not have access to the mail at their address at the time of filing, which is required to obtain a transcript through the mail.¹⁴

The USCIS response to comments about the difficulty of obtaining tax transcripts does not explain why tax transcripts are required. Instead, USCIS claims that they reject fee waiver requests that contain "incomplete copies of tax returns or copies that are not signed or submitted to the IRS." (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), response #14.) Furthermore, USCIS recognized that obtaining this transcript is more burdensome than proving receipt of a means-tested benefit. (Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions," 83 FR 49120 (Sept. 28, 2018), response #7.) It seems that USCIS already has substantial evidence that people are unable to provide sufficient evidence – adding another burdensome requirement will mean even fewer people are able to prove up their request for a fee waiver, despite being eligible for one.

¹⁰ IRS, Welcome to Get a Transcript, available at <https://www.irs.gov/individuals/get-transcript>

¹¹ IRS, Transcript Types and Ways to Order Them, available at <https://www.irs.gov/individuals/tax-return-transcript-types-and-ways-to-order-them>

¹² IRS, Welcome to Get a Transcript, available at <https://www.irs.gov/individuals/get-transcript>

¹³ *Id.*

¹⁴ *Id.*

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.

HILSC staff members' experiences with requesting fee waivers based on financial hardship for eligible clients indicates that these waivers are very rarely granted, even in situations with extreme and/or well-documented financial hardship. In practice, attorneys know that given the difficulties of getting these fee waivers approved, there are currently only two methods of obtaining a fee waiver; the elimination of the means-tested benefit option will, for all practical purposes, limit this to one method.

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. In Houston, however, nearly a quarter (34%) of lawful permanent residents live at or below 100% of federal poverty guidelines.¹⁵ This is a significant portion of individuals who are eligible to naturalize but who may be unable to afford the high fees of naturalization.

The USCIS response to public comments entirely neglects to address the harm caused by a delay in applying for naturalization. USCIS suggests that individuals who cannot pay the fee simply "extend their permanent resident card and save funds to pay the fee for an application for naturalization at a later date" since "there is no time limit for applying for naturalization." Individuals who are prevented from naturalizing because of increased burdens in the fee waiver process face prolonged absences from family members and an inability to fully engage in the U.S. political system as voters. For asylum seekers and refugees, waiting to apply for naturalization can mean a death sentence for relatives who are living in dangerous situations abroad and cannot be petitioned for until after naturalization. (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), response #9).

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. Victims of domestic violence, who may not have access to household financial information as part of the control exerted

¹⁵ Capps, Randy and Ariel G. Ruiz Soto, "A Profile of Houston's Diverse Immigrant Population in a Rapidly Changing Policy Landscape" Migration Policy Institute (September 2018), available at: <https://www.migrationpolicy.org/research/profile-houston-immigrant-population-changing-policy-landscape>

by their abusers will not be able to get fee waivers under the proposed rule. Nor would immigrants who are already in the United States but do not have lawful status (and thus their names are not on many of the household's official documents) such as U visa applicants and other vulnerable groups.

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.

This difficulty obtaining documents for Houston-area immigrants has been exacerbated by Hurricane Harvey. Harvey hit Houston in August 2017 and caused catastrophic levels of damage. Many low-income families in Houston have not recovered from the destruction wrought by the hurricane. A study released in August 2018 found that nearly a quarter of those surveyed were in a worse financial situation than they were before the hurricane, and forty percent of respondents were not getting the help they needed to rebuild their lives.¹⁶ Fee waiver applicants may not have access to documentation to demonstrate financial hardship that was destroyed in the storm. Many are in unstable living situations where their names may not be listed on the household's official documents, making it all but impossible for them to apply for a fee waiver with evidence of extreme financial hardship. In addition, their 2017 income taxes will not reflect their current financial realities because the storm hit toward the end of 2017. Those who are receiving means-tested benefits have already been found to be low income by the state or local government and have had their cases assessed by agencies familiar with the situations in areas affected by Hurricane Harvey.

It is difficult for applicants, particularly *pro se* applicants, to ascertain whether they qualify for a fee waiver based on financial hardship and, if so, what they must demonstrate in order to have it approved. In Houston, many fee waiver applicants are *pro se*, largely because our region lacks a sufficient number of attorneys who work for free or low cost to support low-income immigrants in their court proceedings or USCIS applications. A substantial number of Houston's immigrant community are unlikely to be able to pay the USCIS filing fees, let alone an attorney. Twenty-four to twenty-eight percent of our region's immigrants live at 100% of the federal poverty level.¹⁷ Over 50-60% of Houston's immigrants live between 100% and 200% of the federal poverty guidelines.¹⁸ Individuals who struggle to afford legal representation are the same individuals who need fee waivers, and the fee waiver process is complex enough that most applicants need legal advice to help them apply.

While receipt of a means-tested benefit and income below 150% of the Federal Poverty Guidelines are clear-cut method of determining eligibility, "financial hardship" is a much more nebulous standard. Applicants may face difficulty accurately determining the value of their assets.

¹⁶ Houston Chronicle, *Don't say it's over. A year later, Harvey recovery remains uneven with many still struggling.* August 22, 2018, available at <https://www.houstonchronicle.com/news/houston-texas/houston/article/Don-t-say-it-s-over-A-year-later-Harvey-13175923.php>

¹⁷ Capps, Randy and Ariel G. Ruiz Soto, "A Profile of Houston's Diverse Immigrant Population in a Rapidly Changing Policy Landscape" Migration Policy Institute (September 2018), available at: <https://www.migrationpolicy.org/research/profile-houston-immigrant-population-changing-policy-landscape>

¹⁸ *Id.*

Applicants may also have difficulty determining whether a specific asset is one that can “easily” be converted into cash “without incurring a hardship” as indicated by USCIS in the instructions to form I-912. These unclear standards, with little guidance provided as to how these applications will be adjudicated, means that applicants may not be able to apply based on financial hardship even if they are qualified. HILSC believes that financial hardship should remain a means of qualifying for a fee waiver, but that it should remain as one of three potential options, as is current practice.

In summary, the proposed changes would be an excessive burden to applicants.

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.

In its response to comments, USCIS fails to address the increase time costs to the agency in re-adjudicating income that a public-benefit granting agency had already determined. USCIS does not address this at all, instead focusing on its need to review whether certain public benefits are not means-tested. It seems that finding out which state programs that are not means-tested and rejecting applications that are based on those is a significantly smaller burden on the agency than having to determine whether each applicant’s income is below the federal poverty guideline – something that state agencies have already spend significant time doing. (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), response #5).

USCIS’s own estimates indicate that about 350,000 applicants use the fee waiver form every year. If all those applicants were forced to obtain documentation from the IRS, the IRS would be required to process more than 1,300 requests each business day. This is an enormous burden on the agency, and allowing applicants to qualify based on the receipt of means-tested benefits or by using copies of tax returns to qualify based on income below 150% of the Federal Poverty Guidelines, as is currently permitted, is a policy that will not unduly burden applicants or other government agencies.

Furthermore, this would put an additional burden on USCIS – an agency that already suffers profound capacity shortfalls. With nearly 6 million pending cases as of March 31, 2018, DHS has

conceded that USCIS lacks the resources to timely process its existing workload.¹⁹ By the end of FY 2017, 5,606,618 applications and petitions remained adjudicated by USCIS²⁰—23% more than one year earlier.²¹ In February 2018, DHS conceded, “USCIS continues to face capacity challenges.”²² In fact, processing times for many of the agency’s product lines has doubled in recent years.²³

The Purpose of the Proposed Regulation is to Reduce the Number of Fee Waivers Granted

USCIS has an interest in seeing the number of fee waivers granted reduced. The agency is supported by fee revenues (over 95% of its budget) and would make more money if it granted fewer fee waivers. In its own news announcement, USCIS has lamented the fact that the “annual dollar amount of fee waivers granted by USCIS increased from \$344.3 million in fiscal year (FY) 2016 to \$367.9 million in FY 2017.”²⁴ Yet the number of filings increased across the board, leading to an “unanticipated rise in filings” in 2017.²⁵

USCIS laments this lost income. In its response to comments, USCIS states that it approved 86% of fee waiver requests. (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), response #4). It is clear that the agency is looking for a way to decrease the number of fee waivers granted and removing the means-tested benefit and adding burdens to the form itself it the mechanism by which it has chosen to do so. USCIS has not provided any data about what percentage of fee-waivers are granted based on each of the three criteria; however, it is our experience that the majority of their fee waivers are granted on means-tested benefits and that proving economic hardship to USCIS is increasingly harder to do and results in denials to deserving clients.

¹⁹ USCIS Webpage, “Data Set: All USCIS Application and Petition Form Types: Fiscal Year 2018, 2nd Quarter” (Jul. 17, 2018);

[www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly All Forms FY18Q2.pdf](http://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly%20All%20Forms%20FY18Q2.pdf); DHS, “Annual Report on the Impact of the Homeland Security Act on Immigration Functions Transferred to the Department of Homeland Security” (Apr. 13, 2018); www.uscis.gov/sites/default/files/reports-studies/Annual-Report-on-the-Impact-of-the-Homeland-Security-Act-on-Immigration-Functions-Transferred-to-the-DHS.pdf.

²⁰ U.S. Citizenship and Immigration Services. Data set: All USCIS Application and Petition Form Types, 2017, available at

www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/Quarterly All Forms FY17Q4.pdf. End of FY 2017 Pending Forms – 5,606,618.

²¹ U.S. Citizenship and Immigration Services. Data set: All USCIS Application and Petition Form Types, 2016, available at

www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/all_forms_performancedata_fy2016_qtr4.pdf. End of FY 2016 Pending Forms – 4,316,013.

²² U.S. Department of Homeland Security. Annual Performance Report: Fiscal Years 2017-2019, 2018, available at www.dhs.gov/sites/default/files/publications/DHS%20FY%202017-2019%20APR 0.pdf.

²³ See USCIS Webpage, “Historical National Average Processing Time for All USCIS Offices” (up to Jul. 31, 2018); egov.uscis.gov/processing-times/historic-pt.

²⁴ <https://www.uscis.gov/news/alerts/proposed-i-912-fee-waiver-form-revision>

²⁵ U.S. Citizenship and Immigration Services, USCIS Response to the Citizenship and Immigration Services Ombudsman’s (CISOMB) 2017 Annual Report to Congress (May 11, 2018), available at www.uscis.gov/sites/default/files/USCIS/Resources/Ombudsman%20Liaison/Responses%20to%20Annual%20Reports/cisomb-2017-annual-report-response.pdf

Conclusion

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.

The proposed changes to the fee waiver eligibility criteria, as well as the greater evidentiary burden on applicants, will create tremendous barriers for those seeking to secure their immigration status. 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.

Thank you for the opportunity to participate in the rule-making process.

Sincerely,



Andrea Guttin
Legal Director
Houston Immigration Legal Services Collaborative



Kate Vickery
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