Samantha Deshommes  
Chief, Regulatory Coordination Division  
USCIS Office of Policy and Strategy  
Department of Homeland Security  
20 Massachusetts Avenue NW  
Washington, DC 20529-2140  

Re: Docket ID USCIS-2010-0008 – Public Comment Opposing Proposed Changes to Fee Waiver Eligibility Criteria, FR Doc. 2018-21101 Filed 9/27/18; 83 FR 49120, 49120-49121  

Dear Ms. Deshommes:  

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, USCIS Docket ID USCIS-2010-0008, OMB Control Number 1615-0116, published in the Federal Register on September 28, 2018.  

Statement of Interest  

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 would generally be considered low-income, with incomes below 187.5%, 150%, or 125% of the Federal Poverty Guidelines, depending on the requirements of the nonprofit agencies.  

Summary  

HILSC opposes the proposed revision to Form I-912 and requests that USCIS withdraw this proposed revision. Eliminating access to fee waivers through demonstrated receipt of a means-tested benefit will prevent many qualified, low-income immigrants from submitting applications for benefits they otherwise qualify for. 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. First, 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 require re-certification of eligibility after a specified period of time. In addition, state benefits programs – like that of Texas – take into consideration more specific, individualized circumstances that may not be reflected in tax returns or even current paystubs alone. Finally, 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.
Receipt of a Means-Tested Benefit Accurately Reflects an Individual's Current Situation

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. 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 such as rent/mortgage and utilities, changes in unearned income if the amount changes by more than $50, and various other income changes.

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 re-certify their eligibility every six months. 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 situation 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. 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. 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.

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 nonliquid resources, such as

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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.
5 Id.
6 Id.
vehicles, buildings, land, or other property. 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.

This would put an additional burden on 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. By the end of FY 2017, 5,606,618 applications and petitions remained unadjudicated by USCIS — 23% more than one year earlier. In February 2018, DHS conceded, “USCIS continues to face capacity challenges.” In fact, processing times for many of the agency’s product lines has doubled in recent years.

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.

**Fee Waivers Based on Financial Hardship Are Not Practicable for All Qualified Applicants**

Though applicants for fee waivers do have an opportunity to qualify through another means, by demonstrating “financial hardship including, but not limited to, medical expenses of family members, unemployment, eviction, and homelessness,” this option will not be available to large numbers of applicants for various reasons.

First, 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, limits this to one.

Second, it is often difficult for low-income immigrants to document expenses and liabilities. This is especially true for victims of domestic violence, who may not have access to household financial

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information as part of the control exerted by their abusers, or for immigrants who are already in the United States but do not have lawful status (and thus their names are not on any of the household's official documents) such as U visa applicants.

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. 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.

Finally, 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. 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. 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.

Different State-Level Eligibility Considers Cost of Living and Other Nuances

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 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. The only exceptions are Alaska and Hawaii, which have different Federal Poverty Guidelines. This

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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. 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.

**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. Most individuals retain copies of this document and will not need to request additional copies from the IRS, whereas a tax transcript is not something most individuals have on hand.

In order to request transcripts, applicants must have their Social Security numbers or Individual Tax Identification Numbers (ITIN). 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 consent or having them sent via mail to the address on file, 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. 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.

In addition to burdening the applicant, this requirement will also burden the IRS. 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

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19 Id.
20 Id.
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.

**Conclusion**

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 to withdraw the proposed revision.

Sincerely,

[Signature]

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[Signature]

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