



May 3, 2019

USCIS Desk Officer
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Submitted via email to dhsdeskofficer@omb.eop.gov

**RE: OMB Control Number 1615-0116; USCIS Agency Information Collection Activities;
Revision of a Currently Approved Collection: Request for Fee Waiver;
e-Docket ID USCIS-2010-0008**

Dear OMB USCIS Desk Officer:

The Catholic Legal Immigration Network, Inc. (CLINIC) submits these comments to the Office of Management and Budget on OMB Control Number 1615-0116; USCIS Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver.

CLINIC is the nation's largest network of nonprofit legal immigration services programs. The network includes approximately 370 affiliated immigration programs, which operate out of more than 400 offices in 49 states. CLINIC's network employs more than 1,500 attorneys and accredited representatives who, in turn, serve hundreds of thousands of low-income immigrants each year. CLINIC and its member agencies serve family-based immigration applicants, applicants for naturalization, and vulnerable migrants such as victims of trafficking and crimes, refugees, asylees, VAWA petitioners, Special Immigrant Juveniles, and Temporary Protected Status applicants for free or on a sliding-scale basis.

CLINIC's work is guided by its Catholic identity and mission to welcome the stranger. Catholic Social Teaching demands special care and advocacy for the rights and dignity of the most vulnerable among us. Accordingly, CLINIC has a lengthy history of fee waiver advocacy. CLINIC has advocated in favor of establishing fee waivers for several form types and a standardized application process by way of Form I-912. CLINIC has also worked with U.S. Citizenship and Immigration Services (USCIS) over the years in assisting its affiliate network in resolving individual case issues with fee waiver applications and has partnered with USCIS to identify and address systemic issues related to fee waivers. We have submitted multiple comments on the proposed changes to Form I-912 over the years. On November 27, 2018, CLINIC submitted its comment¹ in opposition to USCIS's proposal to eliminate the option to apply for a fee waiver based on receipt of a means-tested benefit.² We have attached that comment, for the record, and present this comment to supplement and reiterate our points. Thus, CLINIC's record of advocating for access to immigration benefits for low-income applicants and working with USCIS toward agency efficiency with respect to fee waivers is clear.

¹ *CLINIC Submits Comments Opposing USCIS' Unjustified and Burdensome Proposal to Reduce Fee Waivers*, CLINIC (Nov. 28, 2018),

<https://cliniclegal.org/resources/clinic-submits-comments-opposing-usciss-unjustified-and-burdensome-proposal-reduce-fee>.

² 83 Fed. Reg. 49120 (Sept. 28, 2018), www.federalregister.gov/documents/2018/09/28/2018-21101/agency-information-collection-activities-revision-of-a-currently-approved-collection-request-for-fee.



I. General comments

CLINIC opposes USCIS' proposed changes to filing fee waivers including 1) eliminating the option to apply for a fee waiver based on receipt of a means-tested benefit, 2) making Form I-912 mandatory for each individual applicant, and 3) requiring specific IRS documentation as part of the application.³ The proposal also includes the recession of the current policy memorandum on fee waivers.⁴ USCIS' proposal should be withdrawn in its entirety because the current policy well serves the objectives of the Paperwork Reduction Act and the changes have no practical utility. The proposed changes drastically and unjustifiably increase time, expense, and burdens on applicants, their representatives, state and local agencies, and on USCIS itself.

II. Background and benefits of fee waivers

Fee waivers are crucial in providing individuals and families with access to vital immigration benefits including citizenship and naturalization, work authorization, green card renewals, certain humanitarian and survivor-based benefits, and more.⁵ Fee waivers help people to stabilize their situations, financially support themselves, and fully integrate into their communities. These immigration benefits have the power to lift up and transform families, communities, and the country as a whole. Because of the benefits of naturalization—one of the form types most frequently associated with fee waiver requests⁶—Congress has called on USCIS to keep the pathway to citizenship affordable and accessible.⁷ A recent Congressional Committee report states, “USCIS is *expected* to continue the use of fee waivers for applicants who can demonstrate an inability to pay the naturalization fee.”⁸ USCIS' proposed changes to filing fee waivers would severely undermine Congressional intent.

Unlike many other federal agencies, USCIS is not primarily supported by taxpayer dollars.⁹ Instead, Congress requires all immigration application processing expenses (the bulk of USCIS' budget) to be fully supported by application fees.¹⁰ Accordingly, USCIS is required to conduct an audit every two years to determine the cost of processing each kind of application.¹¹ While application fees have steadily increased over the years, the increases have not improved longstanding mismanagement and efficiency issues.¹² In 1997, the total fee for the naturalization application was \$95.¹³ Today, it is \$725,¹⁴ an increase of 663 percent. Each time filing fees go up, it becomes increasingly difficult for individuals and families to afford them, pushing citizenship and other immigration benefits further and further out of reach.

³ 83 Fed. Reg. 49120 (Sept. 28, 2018), www.federalregister.gov/documents/2018/09/28/2018-21101/agency-information-collection-activities-revision-of-a-currently-approved-collection-request-for-fee; 84 Fed. Reg. 13687 (April 5, 2019), www.federalregister.gov/documents/2019/04/05/2019-06657/agency-information-collection-activities-revision-of-a-currently-approved-collection-request-for-fee; *Instructions to Request for Waiver 3.25.2019*, (April 5, 2019), www.regulations.gov/document?D=USCIS-2010-0008-1246.

⁴ 84 Fed. Reg. 13687 (April 5, 2019), www.federalregister.gov/documents/2019/04/05/2019-06657/agency-information-collection-activities-revision-of-a-currently-approved-collection-request-for-fee.

⁵ Filing fee waivers are currently available for over two dozen form types. See *Request for Fee Waiver*, <https://www.uscis.gov/i-912>.

⁶ *USCIS Fee Waiver Policies and Data, Fiscal Year 2017 Report to Congress*, USCIS (Sept. 17, 2017), www.dhs.gov/sites/default/files/publications/USCIS%20-%20Fee%20Waiver%20Policies%20and%20Data.pdf.

⁷ H. Rep. No. 115-948 accompanying H.R. 6776, the Department of Homeland Security Appropriations Act (2019).

⁸ *Id.* [Emphasis added].

⁹ *Budget, Planning, and Performance*, USCIS, www.uscis.gov/about-us/budget-planning-performance.

¹⁰ William A. Kandel, *U.S. Citizenship and Immigration Services (USCIS) Functions and Funding*, Congressional Research Service (May 15, 2015), <https://fas.org/sgp/crs/homesec/R44038.pdf>.

¹¹ Chief Financial Officers Act of 1990, 31 USC 901-03 and Office of Management and Budget Circular A-25.

¹² Jerry Markon, *A decade into a project to digitize U.S. immigration forms, just 1 is online*, THE WASHINGTON POST (Nov. 8, 2015), www.washingtonpost.com/politics/a-decade-into-a-project-to-digitize-us-immigration-forms-just-1-is-online/2015/11/08/f63360fc-830e-11e5-a7ca-6ab6ec20f839_story.html?noredirect=on&utm_term=.687fab451322.

¹³ Chad C. Haddal, *U.S. Citizenship and Immigration Services' Immigration Fees and Adjudication Costs: The FY2008 Adjustments and Historical Context*, Congressional Research Service (June 12, 2007), <http://trac.syr.edu/immigration/library/P1984.pdf>.

¹⁴ 8 C.F.R. § 103.7(b)(1)(i)(BBB).



Consequently, as fees have risen, the ability to apply for a fee waiver based on a means-tested benefit and the other flexibilities built into USCIS' current policy have become increasingly important. A straightforward, efficient, minimally burdensome process is the key to access.

III. USCIS appears to be seeking fewer fee waiver applications and approvals, not to improve efficiency or reduce burden

USCIS' proposed changes to fee waivers would primarily result in preventing vulnerable immigrants from accessing certain immigration benefits. In addition to the burdens, costs, and inefficiencies of the proposed changes as discussed in the body of this comment, USCIS fails to offer meaningful data or evidence to support the changes in the Federal Register Notices or responses to comments.¹⁵ Furthermore, language in USCIS' responses to comments from the 60-day comment period suggests reducing fee waiver applications and approvals is the goal, not improving the system.

In its proposal, USCIS fails to offer a rational basis, data, or other evidence as to why or how the proposed changes would be beneficial or necessary. The agency's main assertion is that the changes are needed to "standardize" the application process because state or local public benefit granting agencies do not necessarily use a national standard to determine need.¹⁶ However, USCIS provides no explanation or data as to why a local agency making a determination based on local standards of living would be problematic to an analysis of whether an individual applicant (living in that locality) is able to afford a USCIS filing fee.¹⁷

One of the few data points that USCIS does include in its comment responses suggests its goal is to reduce fee waivers, not to improve standardization or efficiency. In Comment 4, USCIS states that 86 percent of fee waiver requests were approved in Fiscal Year 2017 and that it needs to make the proposed changes in order to ensure that costs are fair to applicants who do not need a fee waiver.¹⁸ The fee waiver was created to provide access to citizenship and other immigration benefits for low income individuals. By pointing to *approvals* as its relevant data point, USCIS seems to be indicating that it wants to prevent people from being approved for fee waivers, not that it wants to implement a standard. It follows that in order to achieve that goal, USCIS is implementing a more burdensome and inefficient application process at all levels, including on USCIS itself.

Furthermore, in its responses to comments, USCIS does not include any data as to the number of fee waivers submitted based on receipt of a means-tested benefit as opposed to the other two criteria,¹⁹ which would be a critical data point in determining what is the most efficient and least burdensome way to apply. This suggests that either USCIS is proposing changes without examining this data or it has omitted it because it may be unfavorable to its position.

As a Catholic organization grounded in the belief that all human beings possess inherent dignity and rights, CLINIC particularly notes and objects to USCIS' use of language that minimizes and disregards the impact of these

¹⁵ 83 Fed. Reg. 49120 (Sept. 28, 2018), www.federalregister.gov/documents/2018/09/28/2018-21101/agency-information-collection-activities-revision-of-a-currently-approved-collection-request-for-fee; 84 Fed. Reg. 13687 (April 5, 2019), www.federalregister.gov/documents/2019/04/05/2019-06657/agency-information-collection-activities-revision-of-a-currently-approved-collection-request-for-fee; See generally, *USCIS Responses to Public Comments on I-912 Revision 60-day Federal Register Notice*, (April 5, 2019), www.regulations.gov/document?D=USCIS-2010-0008-1243.

¹⁶ See generally, *USCIS Responses to Public Comments on I-912 Revision 60-day Federal Register Notice*, (April 5, 2019), www.regulations.gov/document?D=USCIS-2010-0008-1243.

¹⁷ *Id.*

¹⁸ *Comment 4: USCIS Responses to Public Comments on I-912 Revision 60-day Federal Register Notice*, (April 5, 2019), www.regulations.gov/document?D=USCIS-2010-0008-1243.

¹⁹ *Id.*



proposed changes on individuals and families in its comment responses.²⁰ In particular, USCIS repeatedly uses words and phrases such as “minimal,” “merely” and “small.”²¹ In one particularly myopic response to public comments, the agency replies that people can “save funds” to eventually pay for naturalization, failing to address the fees that will be required to maintain status or the less tangible impact of not being able to fully integrate into the community and country a person or family calls home.²²

Accordingly, due to the content of USCIS’ Federal Register Notices and comment responses, its lack of relevant data to support its assertions,²³ and multitude of ways these changes will add burden and inefficiency at all levels of the system, the goal and effect of the proposed changes will only serve to block immigrants from obtaining immigration benefits and impose a wealth test on achieving the American dream.

IV. USCIS’ current fee waiver policy and process is efficient, has practical utility, minimizes duplication and burden, and well serves the objectives of the Paperwork Reduction Act

CLINIC affiliates report that almost all of the fee waivers they file are based on the applicant’s receipt of a means-tested benefit. For an individual applicant, applying for a fee waiver by showing receipt of a means-tested benefit (as opposed to the other criteria) is the least burdensome option, requiring gathering the least amount of evidence and filling out the least amount of paperwork. Part 4 of the fee waiver application Form I-912, which pertains to means-tested benefits criterion, has one question, while Part 5 (pertaining to low income/Federal Poverty Guidelines) has nine questions and spans nearly two pages and Part 6 (pertaining to financial hardship) has three questions and spans one page.²⁴ Furthermore, it is efficient for individuals to be able to utilize the time and effort they spent applying for the means-tested benefit at the state or local agency in order to apply for immigration benefits. In its response to comments, USCIS notes an 86 percent approval rate to fee waiver requests in Fiscal Year 2017.²⁵ The high approval rate for fee waivers is an indicator of the effectiveness and utility of the current form and guidelines; applicants are able to self-select well, understanding their eligibility and how to apply.

For legal services providers, fee waiver applications on the basis of receipt of a means-tested benefit allow organizations to efficiently provide service using workshop models. Through workshops, nonprofits like CLINIC affiliates maximize time and efficiency and attract volunteers, which are crucial in-kind support for these organizations. Applying for a fee waiver through receipt of a means-tested benefit is so straightforward, immigration legal service providers are typically able to staff the fee waiver station of workshops with non-attorney volunteers, freeing up legal representatives’ time for more complex cases. Due to the ease of the process, these volunteers typically require minimal training. Many of CLINIC’s affiliates charge a small fee for the immigration benefit application preparation at these workshops, bringing in some revenue for the agency to help offset the costs incurred at workshops and to allow programs to provide other legal services for free or at a nominal rate. Workshops also allow CLINIC affiliates to invite county public benefits officials to assist with preparing and

²⁰ See generally, USCIS Responses to Public Comments on I-912 Revision 60-day Federal Register Notice, (April 5, 2019), www.regulations.gov/document?D=USCIS-2010-0008-1243.

²¹ *Id.*

²² Comment 9: USCIS Responses to Public Comments on I-912 Revision 60-day Federal Register Notice, (April 5, 2019), www.regulations.gov/document?D=USCIS-2010-0008-1243.

²³ 83 Fed. Reg. 49120 (Sept. 28, 2018), www.federalregister.gov/documents/2018/09/28/2018-21101/agency-information-collection-activities-revision-of-a-currently-approved-collection-request-for-fee; 84 Fed. Reg. 13687 (April 5, 2019), www.federalregister.gov/documents/2019/04/05/2019-06657/agency-information-collection-activities-revision-of-a-currently-approved-collection-request-for-fee; See generally, USCIS Responses to Public Comments on I-912 Revision 60-day Federal Register Notice, (April 5, 2019), www.regulations.gov/document?D=USCIS-2010-0008-1243.

²⁴ Current version of Form I-912, www.uscis.gov/i-912.

²⁵ Comment 4: USCIS Responses to Public Comments on I-912 Revision 60-day Federal Register Notice, (April 5, 2019), www.regulations.gov/document?D=USCIS-2010-0008-1243.



printing benefit enrollment documentation on the spot, utilizing their expertise to ensure fee waivers can be completed quickly and accurately. This is a particularly common practice at naturalization workshops.

Processing fee waiver applications based on receipt of a means-tested benefit is also the most operationally efficient option for USCIS. Under current USCIS policy, applications will normally be approved if an individual provides sufficient proof of receipt of a means-tested benefit.²⁶ This allows for a relatively fast adjudication with minimal training. Furthermore, through the means-tested benefit criterion, USCIS utilizes the labor and adjudication that have already been done by a state or local agency instead of duplicating efforts. State and local agencies are also better equipped to determine need and typically evaluate local cost of living factors in their determination.

V. USCIS’ proposed changes would duplicate work, add burden and inefficiency at all levels, and undermines the Paperwork Reduction Act objectives

USCIS’s proposed changes include: 1) the elimination of means-tested benefit—leaving only household income at or below 150 percent of the Federal Poverty Guidelines and financial hardship as grounds to apply for a fee waiver, 2) making Form I-912 mandatory for each individual, as opposed to the current option to provide a letter, affidavit, etc. instead of filling out the form, and 3) requiring specific documentation from the IRS.²⁷

a. Impact on individuals and families

For individuals and families, losing the means-tested benefit option and requiring that each individual file Form I-912 and submit an IRS tax transcript as documentation imposes an excessive burden, has financial implications, and will be time consuming.

Without the means-tested benefit option, the next criterion the majority of applicants would apply under would be demonstrating household income under the Federal Poverty Guidelines. Due to the burden of the current form and requirements, it is typically only used if an applicant cannot apply under means-tested benefit.

Below is an analysis of the burdens related to each of the questions in Part 5 of the revised form, pertaining to the Federal Poverty Guidelines:

Requirement/question ²⁸	Burdens on applicants
Part 5, Question 3: “Information about your spouse”	If the spouse does not live in the household and does not provide financial support, USCIS will often ask for supporting evidence. This can mean contacting a spouse who lives overseas and obtaining an affidavit explaining that he/she is not able to provide financial support to the applicant, or trying to locate a spouse the applicant has not heard from in years.
Part 5, Question 4: Household Size	Household size can be difficult to determine for larger households with adult children and extended family members. Applicants may not know who to count in

²⁶ USCIS Policy Memorandum PM-602-0011.1, (March 13, 2011), www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2011/March/FeeWaiverGuidelines_Established_by_the_Final%20Rule_USCISFeeSchedule.pdf.
²⁷ Instructions to Request for Waiver 3.25.2019, (April 5, 2019), <https://www.regulations.gov/document?D=USCIS-2010-0008-1246>.
²⁸ Table of Changes - Form 2.5.2019 (April 5, 2019), www.regulations.gov/document?D=USCIS-2010-0008-1245.



	their household for purposes of the fee waiver. A more common example is when there is an adult child living in the household who is a student and works part-time; it is difficult to determine whether to count this child and his/her income. When the applicant him/herself is the adult child, it can be even more difficult, as the form instructions are unclear on whether the applicant is considered part of the parents' household or a household of one.
Part 5, Question 7: “If you or your household member did not file a tax return for the last year, select the reason for not filing and provide an explanation”	Many people applying for a fee waiver may not have been required to file a tax return for the previous year. Requiring a narrative explanation and supporting documentation is burdensome. For example, this might require collecting pay stubs, employer letters, and other evidence of income.
Part 5, Question 8 – 9: Your Annual Income and Annual Income of All Family Members	This can be a challenging calculation, especially for applicants with large households. The income information may not be readily available.
Part 5, Question 10: Total Additional Income or Financial Support	Totaling up additional income or financial support from various sources (and collecting the related documentation) is extremely challenging and may not be straightforward. Everything must be accounted for and documented, such as child support, educational stipends, Social Security benefits, pensions, and financial support received from adult children or other members of the household who are not counted in the household size.
Part 5, Question 12: Has anything changed since the date you filed your Federal tax returns?	Here, the applicant may need to provide a narrative explaining the changes or special circumstances.

According to the above analysis, it is unfounded for USCIS to state that individuals would “be merely providing the same documentation to USCIS” that was provided to a public benefit granting agency.²⁹ Documentation may not be the same nor may it be readily available to an applicant for many reasons.

The baseline requirement of an IRS tax transcript would impose an unreasonable burden on individuals and families and unnecessarily create additional steps in the application process. The IRS website offers two options to receive a free tax transcript—generated online or by mail in 5 to 10 days.³⁰ For either option, individuals need internet access. This becomes increasingly difficult for people who cannot afford internet access (common for an individual or family applying for a fee waiver), are homeless, or may be in rural areas with limited options. People may incur costs traveling to a place where they can access the internet. Additionally, the IRS website is only

²⁹ Comment 8: USCIS Responses to Public Comments on I-912 Revision 60-day Federal Register Notice, (April 5, 2019), www.regulations.gov/document?D=USCIS-2010-0008-1243.

³⁰ www.irs.gov/individuals/get-transcript.



available in five languages other than English,³¹ imposing additional barriers for people who do not speak or read those languages.

To request a transcript generated online—in addition to Social Security Number, date of birth, filing status and mailing address from latest tax return—the IRS requires “access to your email account; your personal account number from a credit card, mortgage, home equity loan, home equity line of credit or car loan; and a mobile phone with your name on the account.”³² Low income individuals often do not have one or more of these items. To request by mail, individuals need less information (Social Security or Individual Tax identification Number; date of birth; and mailing address from last tax return) but will need to wait 5 to 10 days. People who are homeless or unstably housed will face additional barriers.

Making Form I-912 mandatory for each person filing a fee waiver request (and eliminating the option for family applications) would also add significant burdens. The relevant section of the Form for applying via the Federal Poverty Guidelines is longer and more complex than the means-tested benefit section. The more forms a family is forced to complete, the more likely a mistake will be made and an application rejected. Starting over is expensive and time consuming and will delay the ability of a person to attain the immigration benefit being sought, with ripple effects on a person’s life and stability.

Applications for a fee waiver via financial hardship are uncommon as it is extremely burdensome and difficult to demonstrate hardship under USCIS criteria. Such a request requires a narrative explanation of the circumstances, calculation of the value of a person’s assets, calculation of monthly expenses and liabilities, and supporting documentation.³³

Individuals seeking assistance with immigration benefits such as naturalization at a workshop may not be able to access service, as the Form I-912 sections on low-income and financial hardship are too lengthy and document-heavy to be completed in a workshop setting. Individuals are unlikely to have every document needed to complete a fee waiver on the day of a workshop. These individuals would need to return for one-on-one office consultations, resulting in additional travel times and costs. This would also require additional time and effort for the legal representative, impacting agency efficiency. Furthermore, a reduction in workshop services will increase the number of people who try to fill out forms *pro se*, which can result in mistakes and additional time and money spent. Accordingly, an increase in *pro se* applications would likely result in additional backlogs and inefficiency for USCIS.

b. Impact on CLINIC

As the nation’s largest legal services network for low-income immigrants and premiere trainer on fee waivers, CLINIC will face tremendous burdens and costs due to the elimination of the means-tested benefit criteria and other proposed changes. Because all of CLINIC’s trainings and materials are tailored and customized for nonprofit organizations serving low-income immigrants, much of our extensive volume of training materials may be affected and require updating. Fee-waiver exclusive materials that will need to be revised include a toolkit, a webinar, and online, e-learning course. CLINIC’s network of over 1,500 immigration legal practitioners will require re-training

³¹ *Id.*

³² *Id.*

³³ *Table of Changes - Form 2.5.2019* (April 5, 2019), www.regulations.gov/document?D=USCIS-2010-0008-1245.



or additional training. Volunteers who serve CLINIC affiliates will also require re-training, either directly by CLINIC or through resources.³⁴

In addition to substantive training on fee waivers, CLINIC's program management services—which include comprehensive materials on how to hold large-scale naturalization and other types of immigration workshops—will be implicated. The proposed changes would force CLINIC to revise its naturalization workshop resources, which include: 1) a webinar on conducting a mega group application workshop, 2) volunteer training materials, 3) best practices documents for planning and conducting a workshop, 4) forms to use at workshops, etc. The webinar in particular is a preeminent national training tool, walking legal service providers through each step of setting up and holding a mega workshop including outreach, volunteer training, workshop stations and flow, forming effective partnerships for mega workshops, and more. The work to revise these materials and retrain our network and partners will also cost CLINIC significant staff time and expense.

c. Impact on CLINIC's affiliate network, partners, and other legal services providers

Ninety-seven percent of CLINIC affiliates report offering assistance with fee waivers as a service and 50 percent report utilizing workshop models in their program designs. Fee waivers based on receipt of means-tested benefit are *the* tipping point factor that allow legal services organizations that serve low-income clients to provide efficient, streamlined service through workshops, translating to the maximum number of people served (a data point often connected to receipt of grant funds). Legal services organizations like CLINIC affiliates that utilize workshops as part of their core services will be forced to make burdensome changes, affecting efficiency of services, number of people served annually, revenue streams, and more.

CLINIC's affiliates estimate that preparing a fee waiver application based on the Federal Poverty Guidelines will take at least 45 minutes more than means-tested benefit applications due to the extra documentation needed to prove household income, length of the relevant section of Form I-912, and specific documentation requirements.³⁵ The average CLINIC affiliate reports submitting approximately 120 fee waivers per year (almost all via means tested benefit). By that calculation, the average CLINIC affiliate will be spending more than 11 additional days per year to provide the same service they do now.

Additionally, USCIS proposes to require Form I-912 and documentation for each individual, eliminating the option for members of the same household to file a single application and exponentially increasing time and effort required for families.

Below is a breakdown of anticipated effects on workshops at each stage:

Outreach:

Programs will need to update outreach materials to reflect any changes in services. This may affect money that has been spent on advertising. Community outreach will also need to be conducted if service providers can no longer offer workshops to ensure potential clients with limited resources can plan accordingly.

³⁴ Volunteers account for a large part of CLINIC's network's capacity to provide legal services. Nearly 50 percent of respondents to a recent survey reported regularly relying on volunteers to conduct legal services. In that survey of 75 programs, CLINIC affiliates reported utilizing over 84,000 volunteer hours annually.

³⁵ 45 minutes accounts for application preparation alone, not the time it will take applicants to gather the necessary documentation.



Pre-registration and pre-screening consultation:

Legal services providers typically encourage pre-registration at a workshop in order to ensure they are able to serve all the clients that attend. Pre-registration often involves a pre-screening consultation in which legal services staff provide a checklist to potential clients about what documents they need to bring with them and answer other preliminary questions. The proposed changes would require organizations to revise their pre-screening consultation, checklists, and other materials, and each consultation would be more time consuming to account for questions about all the documentation required.

Workshop:

CLINIC affiliates and legal service providers typically have fee waivers as a single station in a large-scale naturalization workshop or workshop for other immigration benefits. With the added time and complexity of filing fee waivers, legal service providers would be forced to change their well-established and fine-tuned models. Some may opt to add entire workshops dedicated solely to fee waivers, with services for the immigration benefit held at a separate workshop. This will require new training, volunteers, advertising, and may require clients to attend two or more workshops. Other programs will undoubtedly determine they can no longer efficiently offer workshops, requiring them to restructure their programs, which could be costly and implicate grant funding.

Legal services programs depend on both legal and non-legal volunteers to run workshops. Programs typically have developed extensive trainings for their volunteers, have established core volunteers that attend every workshop, and have trained repeat volunteers to train new volunteers. Trainings will have to be re-done and volunteer expertise will be lost.

Fee waiver stations at workshops are typically staffed by non-legal volunteers as the means-tested benefit assessment is very straightforward. The proposed changes will require trained legal eyes to ensure that forms are properly completed and all supporting documentation is included, which will likely necessitate new volunteer recruitment. Programs in rural communities with limited legal volunteer recruitment opportunities may be forced to close services in the most underserved areas. Some programs, unable to staff enough legal volunteers, may need to hire additional staff in order to maintain their services.

At least half of CLINIC's affiliates regularly rely on volunteers to conduct legal services, including workshops.³⁶ In a recent survey, one quarter of programs reported that without volunteers, their services would decrease by 1 to 10 percent. Over one-fifth reported that without volunteers, their services would decrease by 11 to 20 percent. Moreover, nearly one-fifth reported that without volunteers, their services would decrease by 21 to 30 percent.

Some providers may add a station to help people generate the IRS tax transcripts online. As many workshops models are paper-based, this may require adding computers and internet access, resulting in additional costs. This option would also require additional staffing for an extra station and would likely altogether slow down the workshop flow.

Ultimately, the added time and difficulty of the proposed changes will translate to legal services organizations serving fewer clients through the workshop model and altogether. As many affiliates charge a nominal fee for form preparation, nonprofit organizations will lose also revenue.

³⁶ In a 2017 survey of 75 programs, CLINIC affiliates reported utilizing over 84,000 volunteer hours annually.



Post-workshop services:

At workshops, particularly challenging cases are often referred to staff attorneys or DOJ accredited representatives at post-workshop consultations. With the added complexity of having to apply for a fee waiver under the Federal Poverty Guidelines, a higher number of clients would likely be referred for post-workshop consultations. This would require program management calculations and assessments, as organizations will have to determine how many additional post-workshop appointments they can schedule and how much staff time can be utilized. This may result in additional burdens on individuals as programs may have to turn away clients with more complex cases or charge an additional fee to access post-workshop services.

Funding implications for certain CLINIC affiliates:

CLINIC also anticipates that affiliates' funding would be impacted by the proposed changes. Fifteen CLINIC affiliates receive funding through the U.S. Citizenship and Immigration Services Fiscal Year 2018 Citizenship and Assimilation Grant Program. These grants have deliverables associated with the number of N-400 naturalization forms filed during the grant period. As many naturalization applications completed by CLINIC affiliates are filed with fee waivers, the proposed changes may add a significant challenge to affiliates being able to meet grant deliverables, making it harder to maintain or compete for new funding.

d. Impact on state/local agencies and communities

USCIS' proposed changes would duplicate work and adjudications that state and local agencies have already done (and are in a better position to do, as they typically account for local cost of living) and shift the burden of people losing access to vital immigration benefits to local communities.

USCIS reports that four form types account for approximately 88 percent of all filing fee waivers: naturalization (Form N-400), adjustment of status (Form I-485), work authorization (Form I-765), and application to replace permanent residence cards (Form I-90).³⁷ These immigration benefits allow people to work to support themselves and their families, get a driver's license, obtain an education, stabilize their immigration status, and fully integrate into their communities. Fee waivers also help survivors of domestic violence and other crimes and those in need of humanitarian protection to move out of violent, volatile situations.

Barriers to fee waivers equate to barriers to these benefits, ultimately hurting not only individuals and families, but disadvantaging communities. People who are unable to obtain a fee waiver to access a crucial immigration benefit may be forced to rely on social or government services in order to survive. Some local and state governments, recognizing the importance of people being able to access these immigration and associated benefits, may create funding programs to help people pay for USCIS filing fees instead of spending that money elsewhere.

In the context of naturalization alone, a recent study by Cities for Citizenship shows, "naturalization can have important macroeconomic benefits for local communities. These include a growth in spending power, higher GDP, and increased tax revenues, all of which can boost local economies."³⁸ Millions of hard-working immigrants are eligible for naturalization,³⁹ but the high application fee presents a major barrier for many. The proposed changes to

³⁷ *USCIS Fee Waiver Policies and Data, Fiscal Year 2017 Report to Congress*, U.S. Citizenship and Immigration Services (Sept. 17, 2017), www.dhs.gov/sites/default/files/publications/USCIS%20-%20Fee%20Waiver%20Policies%20and%20Data.pdf.

³⁸ *America is Home: How Individuals, Families, Cities & Counties Benefit by Investing in Citizenship*, Cities for Citizenship, (Sept. 12, 2018), <https://populardemocracy.org/news/publications/america-home-how-individuals-families-cities-counties-benefit-investing>.

³⁹ *Frequently Requested Statistics on Immigrants and Immigration in the United States*, Migration Policy Institute (March 14, 2019), www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states#Naturalization.



fee waivers will reduce access further, preventing individuals and communities from obtaining benefits that make our society stronger and more prosperous.

e. Impact on USCIS

Removing receipt of a means-tested benefit and USCIS' other proposed changes are operationally inefficient for USCIS, requiring the agency to duplicate an assessment that has already been done by the state or local public benefit granting agency, retrain contractors and adjudicators, and process more paperwork.

In its response to comments from the 60-day comment period, USCIS offers no practical reasoning or meaningful data to justify removing means-tested benefit, stating that the change is needed in order to “standardize.”⁴⁰ Instead of “standardizing,” USCIS’ proposal would *throw out* the best available standard to apply for a fee waiver. Receipt of means-tested benefit is the most useful, pragmatic, and efficient standard as it represents a calculation by a state or local agency, typically based on local costs of living; it is the truest reflection of an individual or family’s financial situation and ability to pay.

Fee waiver application based on receipt of a means-tested benefit is also the most operationally efficient for USCIS, utilizing an assessment that has already been done at the state or local level. To accommodate the proposed changes, USCIS would have to retrain lockbox staff and train additional adjudicators to process the increased amount of data, documentation, and forms required and each adjudication will take more time, adding inefficiency and extending USCIS’ already lengthy processing delays.

USCIS proposes requiring Form I-912 for each individual and eliminating the option for family applications -- consequently for a family of four, USCIS will now have to adjudicate four forms and four sets of supporting documentation instead of one. In its responses to public comments from the 60-day comment period, USCIS stated that the impact of requiring each individual to file a form is “minimal” as less than 10 percent of fee waiver filings include multiple members of the same household and 90 percent are for individuals.⁴¹ Ten percent, seemingly a small number percentage-wise, is deceiving. Recent USCIS data indicates that 331,277 fee waivers were filed in fiscal year 2017.⁴² Accordingly, using those numbers, over 33,100 applications would be added to the system *if the ten percent were only families of two*.

USCIS states that, “Removing means-tested benefits as making the applicant eligible for a fee waiver will reduce the burden on USCIS and permit us to devote some resources to benefit adjudication now being used for fee waivers.”⁴³ The assertion that the changes will reduce the burden on USCIS is unsubstantiated by data and counterintuitive to the realities of the added forms and underlying documentation that will bog down the adjudication process. The statement is only true if the impact of the proposed changes reduces the number of applications submitted -- not because the need has changed, but because the process has become too burdensome. To the extent that it is a true statement that receiving less fee waivers and associated applications will save USCIS time, the burden does not disappear, it is merely transformed and shifted to individuals, families, communities, and state and local agencies.

⁴⁰ See generally, *USCIS Responses to Public Comments on I-912 Revision 60-day Federal Register Notice*, (April 5, 2019), www.regulations.gov/document?D=USCIS-2010-0008-1243.

⁴¹ *Comment 15: USCIS Responses to Public Comments on I-912 Revision 60-day Federal Register Notice*, (April 5, 2019), www.regulations.gov/document?D=USCIS-2010-0008-1243.

⁴² *USCIS Fee Waiver Policies and Data, Fiscal Year 2017 Report to Congress*, U.S. Citizenship and Immigration Services (Sept. 17, 2017), www.dhs.gov/sites/default/files/publications/USCIS%20-%20Fee%20Waiver%20Policies%20and%20Data.pdf.

⁴³ *Comment 5: USCIS Responses to Public Comments on I-912 Revision 60-day Federal Register Notice*, (April 5, 2019), www.regulations.gov/document?D=USCIS-2010-0008-1243.



f. Impact on other federal agencies

In addition to duplicating adjudication and work that has already been done by a state or local agency, and creating additional paperwork for itself, USCIS' proposed changes would also implicate the IRS through the requirement to provide a federal income tax transcript. The least burdensome option for IRS to meet the need would likely be through online-generated requests. However, due to the requirements (including "access to your email account; your personal account number from a credit card, mortgage, home equity loan, home equity line of credit or car loan; and a mobile phone with your name on the account"⁴⁴) it is likely the majority of requests would be for a mailed copy, which would presumably require some manual processing by the IRS.

VI. Specific impact on survivors of domestic violence and other crimes, refugees, and other particularly vulnerable individuals and the organizations that serve them

Certain vulnerable populations and those that serve them would likely be even further impacted by the proposed changes. For vulnerable populations, flexibility and simplicity is the key to access.

Congress recognizes that ensuring equal access to immigration protections for crime survivors is crucial. For this reason, Congress codified the use of fee waivers for crime survivors, specifically stating that the Department of Homeland Security *shall permit applicants to apply for a waiver of any fees* associated with filing a VAWA self-petition, a T or U visa application, or an application for VAWA cancellation or suspension of deportation.⁴⁵

Requiring that survivors fill out the lengthy Form I-912 is an unjustified burden, especially given that survivors may need to provide extensive narrative about why they are unable to provide the expanded required documentation. Filling out long forms increases the chances that mistakes would be made, resulting in denials and delays. For survivors, in addition to the disastrous consequences of not being able to access benefits altogether, not being able to access benefits as quickly as possible could also be catastrophic.

The proposed changes to the fee waiver eligibility criteria would also have a disparate impact on refugees. CLINIC affiliates report that refugees utilize fee waivers at a higher rate than other groups because they are eligible on a limited basis to receive means-tested benefits, unlike many other immigrant groups that are barred from access. Refugees have a high naturalization rate, and our affiliates often help refugees apply for naturalization with a fee waiver based on receipt of a means-tested benefit. Eliminating the means-tested benefit criterion will make it harder for refugees to naturalize, gain the full protections of U.S. citizenship, and fully integrate into our nation. Barriers to naturalization delay refugee family reunification possibilities, bringing additional hardship to separated families, as well as danger for those left behind. Marginalized already as uprooted individuals with instant minority status, non-citizen refugees remain outsiders, barred from full civic participation and limited in their employment and higher educational opportunities.

⁴⁴ www.irs.gov/individuals/get-transcript.

⁴⁵ William Wilberforce Trafficking Victims Protection Reauthorization Act, Section by section 201(d)(7), Public Law No: 110-457 (December 23, 2008) (codified at 8 U.S.C. § 1255(l)(7)), www.congress.gov/110/plaws/pub1457/PLAW-110pub1457.pdf. [Emphasis added].



VII. Other legal questions raised by proposed changes

a. Whether USCIS' proposed changes to filing fee waivers are arbitrary and capricious

The Administrative Procedure Act states that an agency action is unlawful if it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”⁴⁶ The analysis of arbitrary and capricious review is stated in the Supreme Court case, *Motor Vehicle Manufacturers Association v. State Farm Auto Mutual Insurance Co.* (“State Farm”). In *State Farm*, the Court found that an “agency must explain the evidence which is available, and must offer a rational connection between the facts found and the choice made.”⁴⁷

As described in the above comment, USCIS has failed to establish a rational connection between varying income levels used state-by-state to qualify for means-tested benefits and its decision to eliminate receipt of a means-tested benefit as an eligibility criteria. Again, the existing means-tested benefit standard, which accounts for local realities and ability to pay, is the most practical, least burdensome, and most efficient standard at all levels. USCIS has also failed to offer meaningful data or rationale regarding requiring Form I-912, which imposes an unreasonable barrier to access as well as adds additional paperwork and time for families who can apply through a single form under the current policy.

b. Whether the proposed changes should have gone through notice and comment rulemaking

USCIS' proposed changes would affect substantive and fundamental eligibility requirements and would create a profound change in access to fee waivers. Accordingly, USCIS' proposed changes should go through notice and comment rulemaking under the Administrative Procedure Act as opposed to information collection.⁴⁸ According to the legislative history of the Administrative Procedure Act, “[matters] of great importance, or those where the public submission of facts will be either useful to the agency or a protection to the public, should naturally be accorded more elaborate public procedures.”⁴⁹

USCIS argues that the changes to fee waivers are exempt from notice and comment rulemaking as they are interpretive or procedural and people will still be able to technically apply for a fee waiver.⁵⁰ However, as described in the above comment, the proposed changes are so burdensome, they are expected to drastically reduce the number of people applying for/receiving a fee waiver. Courts have made clear that interpretive or procedural rules, “should not be deemed to include any action which goes beyond formality and substantially affects the rights of those over whom the agency exercise authority.”⁵¹

VIII. Conclusion

For the above stated reasons regarding burden, costs, lack of practical utility, and inefficiency affecting individuals and families, legal service providers, state and local agencies and communities, and USCIS itself, CLINIC strongly opposes the proposed changes to fee waivers and recommends the proposal be withdrawn in its entirety. USCIS

⁴⁶ 5 U.S.C. § 706.

⁴⁷ *Motor Vehicle Manufacturers Association v. State Farm Auto Mutual Insurance Co.* 463 U.S. 29 (1983).

⁴⁸ Todd Garvey, *A Brief Overview of Rulemaking and Judicial Review*, CONGRESSIONAL RESEARCH SERVICE (March 27, 2017), <https://fas.org/sgp/crs/misc/R41546.pdf>.

⁴⁹ *Id.*

⁵⁰ See generally, *USCIS Responses to Public Comments on I-912 Revision 60-day Federal Register Notice*, (April 5, 2019), www.regulations.gov/document?D=USCIS-2010-0008-1243.

⁵¹ Todd Garvey, *A Brief Overview of Rulemaking and Judicial Review*, CONGRESSIONAL RESEARCH SERVICE (March 27, 2017), <https://fas.org/sgp/crs/misc/R41546.pdf>.



should continue processing fee waivers pursuant to current policy and practices as set forth in USCIS Policy Memorandum PM-602-0011.1.

Thank you for the opportunity to submit these comments. We appreciate your consideration. Please do not hesitate to contact Jill Marie Bussey, CLINIC Advocacy Director, at jbussey@cliniclegal.org should you have any questions about our comments or require further information.

Sincerely,

Anna Gallagher
Executive Director
Catholic Legal Immigration Network, Inc.

Attachments