



NATIONAL OFFICE

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Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Policy and Strategy
Chief, Regulatory Coordination Division
20 Massachusetts Avenue, NW
Washington, D.C. 20529-2140

RE: Comments on USCIS Proposed Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions
OMB Control No. 1615-0116
e-Docket ID USCIS-2010-0008

Dear Sir or Madam:

The Catholic Legal Immigration Network, Inc. (CLINIC) submits these comments to the U.S. Citizenship and Immigration Services (USCIS) on the above-referenced proposed revision of a currently approved collection of information: Request for Fee Waiver; Exemptions.

CLINIC supports a national network of community-based legal immigration services programs. The network includes approximately 330 affiliated immigration programs, which operate out of more than 400 offices in 47 states. CLINIC's network employs roughly 1,400 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 TPS applicants for free or on a sliding-scale basis.

I. General Comments

CLINIC opposes USCIS' proposal to eliminate the option to apply for a fee waiver based on receipt of a means-tested benefit. The proposed rule should be withdrawn in its entirety because it does not meet the standards of the Administrative Procedures Act (APA)¹ and it would drastically increase time, expense, and paperwork burdens on applicants, their representatives, and on USCIS itself, without the agency stating a sufficient benefit that would be derived from this change.

This proposed change would limit immigrants' access to documentation of their status and their opportunity to improve their immigration status.² Of particular concern are the associated increased

¹ Administrative Procedure Act, 5 U.S.C. II.

² For a list of the USCIS forms, applications, and petitions eligible for a fee waiver, see 8 CFR § 103.7(c)(3). See also USCIS Adjudicator's Field Manual, Chapter 10.9 —Waiver of Fees,

impediments to naturalization.³ Congress has repeatedly reminded USCIS that naturalization benefits the nation and it must remain affordable and accessible. 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... The Committee encourages USCIS to maintain naturalization fees at an affordable level while also focusing on reducing the backlog of applicants.”⁴ This proposed rule would add inefficiencies, burdens, and obstacles that would impede or prevent qualified residents who are committed to our nation and values from naturalizing. Accordingly, the rule runs counter to Congressional objectives for USCIS with regard to naturalization.

We also oppose this proposed curtailing of fee waiver eligibility on the basis of our faith and identity as a Catholic organization. We are called by the gospel to “welcome the stranger;” Pope Benedict XVI appealed to Americans to “help [immigrants] flourish in their new home.”⁵ Improving immigration status is essential to immigrants’ establishment, integration, and success in the United States, and in turn the success of our nation as a whole.

The proposed rule is unjustified and counterproductive to our goals as Americans, as people of faith, and for USCIS as an agency, and therefore it should be withdrawn in its entirety.

II. Background on the Importance of Fee Waivers

Over the history of USCIS, the availability of fee waivers has served a vital role in making citizenship, work authorization, permanent resident card (“green card”), and other crucial immigration benefits attainable for vulnerable immigrants, especially families, older adults, and those with disabilities.⁶ This group includes the hard-working immigrants who perform some of the most laborious jobs in our economy, often for low pay: those who pick our crops, build our homes, care for our children and older adults, mow our lawns, and clean our homes.

Unlike many other federal agencies, USCIS is not supported primarily by taxpayer dollars.⁷ Instead, Congress requires all immigration application processing expenses (the bulk of USCIS’ budget) to be fully supported by application fees.⁸ USCIS is required to conduct an audit every two years to determine the true cost of processing each kind of application⁹, and this has resulted in relentless increases in application fees. In 1997, the total fee for the naturalization application was \$95.¹⁰ Today, it is \$725¹¹, an

www.uscis.gov/ilink/docView/AFM/HTML/AFM/0-0-0-1/0-0-0-1067/0-0-0-1582.html#0-0-0-288 (last visited Nov. 21, 2019).

³ A More Perfect Union: A National Citizenship Plan, Catholic Legal Immigr. Network, Inc., 39 (Jan. 2007) https://cliniclegal.org/sites/default/files/a_more_perfect_union.pdf; New Obstacles to Naturalization, Catholic Legal Immigr. Network, Inc. (2000); Paul McDaniel, The Cost of Citizenship is a Barrier for Some Immigrants, American Immigration Council (Jan. 2015), <http://immigrationimpact.com/2015/01/09/cost-citizenship-barrier-immigrants>.

⁴ H. Rep. No. 115-948 accompanying H.R. 6776, the Department of Homeland Security Appropriations Act (2019).

⁵ Daniel J. Wakin and Julia Preston, Pope Speaks Up for Immigrants, Touching a Nerve, *The New York Times* (Apr. 20, 2008), www.nytimes.com/2008/04/20/us/20catholics.html.

⁶ 8 C.F.R. § 103.7(c). USCIS has the discretion to waive certain application fees if the applicant demonstrates that he or she is unable to pay the fee.

⁷ Budget, Planning, and Performance, USCIS, www.uscis.gov/about-us/budget-planning-performance (last visited Nov. 21, 2018).

⁸ William A. Kandel, U.S. Citizenship and Immigration Services (USCIS) Functions and Funding, Congressional Research Service (May 15, 2015), <https://fas.org/sgp/crs/homsec/R44038.pdf>.

⁹ Id.

¹⁰ 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>.

increase of 663 percent. With each release of fee increases, it becomes increasingly difficult for immigrants and petitioners to afford the filing fees, pushing citizenship and other immigration benefits further and further out of reach.

Without fee waivers, citizenship and all the rights and responsibilities that come with it would only be available for the more well off immigrants who could afford to pay for it. This would be detrimental to a free and democratic society. Moreover, reduced access to fee waivers would mean fewer immigrants are able to obtain work authorization cards or green card renewals: benefits that are essential for obtaining and maintaining gainful employment. Many states tie the expiration of the driver's license to the expiration date on the green card or Employment Authorization Document (EAD).¹² Immigrants who need to be able to drive for work would risk losing their driver's license if they are unable to pay the USCIS fee or obtain a fee waiver. This is punitive to immigrants and counter-productive for states, localities, employers, and local economies, which benefit from resident safety and mobility.¹³ Untenable fees for naturalization, green card renewals, and other benefits would create an inescapable poverty loop and set up a de facto wealth test to access the American dream.

The U.S. government must find ways to promote and facilitate immigrant integration and naturalization, as they are beneficial not only to the immigrant, but also to the community and our nation as a whole. Just four forms account for approximately 88 percent of all fee waivers: the N-400, I-485, I-765, and I-90.¹⁴ These are all forms with enormous, positive benefits, such as the ability to work, obtain a driver's license (often needed for work), and access better-paying jobs and educational opportunities: benefits that improve people's economic status and ability to contribute to their local economy. 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."¹⁵ Millions of hard-working immigrants are eligible for naturalization, but the high application fee presents a major barrier for them. Therefore, it is vitally important for USCIS to maintain access to fee waivers through a simple and straightforward application instead of hindering the most vulnerable applicants.

III. Reasons for CLINIC's Opposition to the Proposed Rule

The proposed rule should be withdrawn for the following reasons:

A. The Proposed Rule Departs from Requirements set by the Administrative Procedure Act

Generally, when an agency promulgates legislative rules, or rules made pursuant to Congressionally delegated authority, the exercise of that authority is governed by the informal rulemaking procedures outlined in the Administrative Procedure Act.¹⁶ In an effort to ensure public participation in the informal rulemaking process, agencies are required to provide the public with

¹¹ 8 C.F.R. § 103.7(b)(1)(i)(BBB).

¹² Mendoza, Gilbert, States Offering Driver's Licenses to Immigrants, National Conference of State Legislatures, (Nov. 30, 2016), www.ncsl.org/research/immigration/states-offering-driver-s-licenses-to-immigrants.aspx.

¹³ Why states should grant driver's licenses to all residents, Catholic Legal Immigr. Network, Inc., (Jan. 9, 2017), <https://cliniclegal.org/resources/drivers-license-backgrounder>.

¹⁴ 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_Fee_Waiver_Policies_and_Data.pdf.

¹⁵ America is Home: How Individuals, Families, Cities & Counties Benefit by Investing in Citizenship, Cities for Citizenship, (Sept. 12, 2018), <http://populardemocracy.org/sites/default/files/C4C%20CPD%20NPNA%20America%20is%20Home%20Report%209-12-18%20FINAL.pdf>.

¹⁶ Administrative Procedure Act, 5 U.S.C. § 553.5.

adequate notice of a proposed rule followed by a meaningful opportunity to comment on the rule's content.¹⁷ Although the APA sets the minimum degree of public participation the agency must permit, "[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."¹⁸

The requirement under § 553 to provide the public with adequate notice of a proposed rule is generally achieved through the publication of a notice of proposed rulemaking in the Federal Register.¹⁹ The APA requires that the notice of proposed rulemaking include "(1) the time, place, and nature of public rulemaking proceedings; (2) reference to the legal authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved."²⁰ Generally speaking, the notice requirement of § 553 is satisfied when the agency "affords interested persons a reasonable and meaningful opportunity to participate in the rulemaking process."²¹

In this case, the opportunity to meaningfully participate is not satisfied by the Notice of Proposed Rulemaking because:

1. The USCIS' Notice of Proposed Rulemaking Lacks Sufficient Evidence

USCIS did not provide any evidence to explain its departure from the prior regulation, calling to question its consistency with the APA.²² The APA states that an agency action is unlawful if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."²³ 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.²⁴ ("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."²⁵ In the proposed rule, the rationale for the proposed change follows in its entirety:

USCIS has found that the various income levels used in states to grant a means-tested benefit result in inconsistent income levels being used to determine eligibility for a fee waiver. Therefore, the revised form will not permit a fee waiver based on receipt of a means- tested benefit, but will retain the poverty-guideline threshold and financial hardship criteria.²⁶

USCIS provides no data to support its assertion that there are varying income levels used in various states, or how widely they vary, or what sources were used to analyze this data.²⁷ Nor does the notice provide any explanation as to why varying income levels among states to qualify for means-tested benefits would be problematic to an analysis of whether an individual applicant in a particular state is able to pay an application fee.²⁸ Nor does the notice consider whether the states' varying income levels for

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ Administrative Procedure Act, 5 U.S.C. § 553(b)1-3.

²¹ Id.

²² 83 Fed. Reg. 49120 (Sept. 28, 2018).

²³ 5 U.S.C. § 706.

²⁴ Motor Vehicle Manufacturers Association v. State Farm Auto Mutual Insurance Co., 463 U.S. 29 (1983).

²⁵ Id. at 52. Quoting Burlington Truck Lines, Inc. v. United States, 371 U.S. 168 (1962).

²⁶ 83 Fed. Reg. 49120 (Sept. 28, 2018).

²⁷ Id.

²⁸ Id.

benefit qualification account for localized factors like cost of living or the nature of the benefit in question.²⁹

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.

2. The Lack of Rationale and Data Precludes Meaningful Public Participation

The proposed regulation does not honor the APA's requirement to allow the public to participate in the rulemaking process because it does not provide enough background, data, or information about the rationale for this proposed change, so the public cannot meaningfully respond. As noted above, the proposed regulation states, "USCIS has found that the various income levels used in states to grant a means-tested benefit result in inconsistent income levels being used to determine eligibility for a waiver."³⁰ This statement is vague at best, as it does not specify which means-tested benefits in which states were contemplated in making this proposed rule. Without any further specific information regarding state administered means-tested benefits, which were used in making this rule, the public cannot present a meaningful comment to this rule. The law is clear that once adequate notice is provided, the agency must provide interested persons with a meaningful opportunity to comment on the proposed rule through the submission of written "data, views, or arguments."³¹ Without additional data or more specific background information to support its proposal, the public is not able to respond to USCIS in a meaningful way.

B. The Proposed Changes would be Inefficient and Burdensome for All Parties

The proposed elimination of the most relied upon criteria for eligibility for USCIS fee waiver will create a substantial and unjustified burden on applicants and their representatives and will create considerable more work for USCIS in processing Form I-912s. The purpose of using means-tested benefit for assessment of ability to pay is to save administrative expense. This proposal is counter-productive and counter-intuitive.

A means-tested benefit, as defined by USCIS in the I-912 instructions, is "a public benefit where a person's eligibility for the benefit, the amount of the benefit, or both, is based on the person's income and resources."³² People who are receiving a means-tested benefit have already gone through a lengthy vetting process with a government agency to examine their income and finances. This process typically takes into account local realities like cost of living in determining eligibility. It is inefficient and burdensome to have applicants go through the same, lengthy vetting process again with USCIS, to prove once again that they are struggling to make ends meet. This is a waste of resources for USCIS adjudicators, the applicant, and the legal service provider.

1. Applications Based on Income Are More Burdensome

The portion of Form I-912 pertaining to low income is very lengthy, detailed, and complex. It usually requires several kinds of supporting documentation that will have to be reviewed by an adjudicator. USCIS adjudicators, who are more accustomed to handling "simple" fee waiver applications based on

²⁹ Id.

³⁰ Id.

³¹ Administrative Procedure Act, 5 U.S.C. § 553(c).

³² Request for Fee Waiver, U.S. Citizenship and Immigration Services, www.uscis.gov/sites/default/files/files/form/i-912instr.pdf (last visited Nov. 26. 2018).

receipt of a means-tested benefit, will need additional training to process caseloads of complex fee waiver cases, and training on the additional documentation requirements. An application based on low income would take much longer for a USCIS officer to adjudicate, and for an applicant or legal service provider to prepare, than one based on receipt of a means-tested benefit.

CLINIC affiliates report that almost all of the fee waivers they currently file are based on the means-tested benefit criteria. If they attempt to file the same number of waiver applications based on income due to this proposed change, our affiliates would need to expend approximately 29,700 hours more per year.³³ However, that effort may be in vain because it is extremely difficult to obtain a fee waiver based on the low-income criteria, and these applications are often denied. USCIS' effort to force all applicants to use the low-income or financial hardship criteria would drastically reduce legal capacity and limit access to fee waivers for those who need them.

2. Requiring Tax Transcripts Burdens Applicants and Agencies

USCIS has proposed changing the form instructions to require a federal income tax transcript from the IRS as documentation of annual income.³⁴ This new requirement has major implications for legal service providers and applicants. Legal service providers will need to spend additional time assisting clients to obtain a federal income tax transcript, and this will delay access to immigration benefits. In addition, low-income clients who wish or need to file for a benefit soon after Tax Day will have to wait for their federal tax return transcript to be processed and available online. The IRS website advises that this can take up to 2.5 months, until late June, depending on how they filed the return (electronic or paper) and whether a balance is due.³⁵

In another proposed change to the form instructions, applicants who have no income or are not able to provide proof of income are required to submit a Verification of Non-filing Letter from the IRS. This letter provides proof that the IRS has no record of a tax return filed for the year requested, and is not available until after June 15 for the current tax year. This new requirement would penalize the most vulnerable applicants, such as the homeless and destitute, who need to file for an immigration benefit soon after Tax Day.

c. The Proposed Change Would Hamper the Legal Workshop Model

For more than two decades, CLINIC has promoted the naturalization workshop model as a way to efficiently provide high-quality services to large numbers of clients. The workshop model is also effective for other kinds of benefits like Temporary Protected Status. We are particularly concerned about the impact of the proposed changes on naturalization workshops, where our affiliates provide assistance with fee waiver applications based on receipt of a means-tested benefit. Completing the section of the I-912 form pertaining to low income or financial hardship is simply not conducive to workshops. It will be much too time-consuming and applicants will not be prepared to provide the level of detail required. The proposed changes will greatly diminish our capacity to serve hard-working applicants through the workshop model, and will necessitate one-on-one appointments with attorneys for each fee waiver applicant. This will limit our ability to meet the need for legal assistance in our communities, especially if each case takes more time to complete.

³³ Based on an estimated increase of 45 minutes additional preparation time as reported by a legal services provider, and our affiliates' reported average of 120 fee waivers filed per year per agency.

³⁴ 83 Fed. Reg. 49120 (Sept. 28, 2018).

³⁵ [Get Transcript FAQ](https://www.irs.gov/individuals/get-transcript-faqs), Internal Revenue Service, www.irs.gov/individuals/get-transcript-faqs (last visited Nov. 26, 2018).

IV. Conclusion

Based on the above explanations regarding the proposed rule's departure from APA requirements and the increased burdens on all parties involved without providing any benefit or improvement to the fee waiver process, we strongly oppose the proposed regulation and request that it be withdrawn. We respectfully request that USCIS continue processing fee waivers pursuant to its 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's Advocacy Director, at jbussey@cliniclegal.org should you have any questions about our comments or require further information.

Sincerely,

A handwritten signature in blue ink that reads "Jeanne Atkinson". The signature is written in a cursive, flowing style.

Jeanne Atkinson
Executive Director