

CLASP

Policy solutions that work for low-income people

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U.S. Citizenship and Immigration Services (USCIS)
Department of Homeland Security
20 Massachusetts Avenue NW
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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. Deshombres:

The Center for Law and Social Policy (CLASP) is grateful for the opportunity to comment on the proposed changes to fee waiver criteria published in the Federal Register on September 28, 2018.

Established in 1968, CLASP is a national, non-partisan, non-profit, anti-poverty organization that advances policy solutions for low-income people. Our comments draw upon the work of CLASP experts in the areas of immigration and anti-poverty policies. As an anti-poverty organization, we understand the critical importance of ensuring that low-income immigrants are able to obtain immigration benefits for their own economic security as well as that of their families.

CLASP opposes the Department of Homeland Security's proposed regulation regarding fee waivers. We urge that the rule be withdrawn, and that current guidelines remain in place. The proposed changes to the fee waiver eligibility criteria and accepted forms of evidence create an additional burden for immigrants and vulnerable individuals, impeding their ability to obtain immigration benefits to the detriment of their long-term stability and economic mobility and that of their families and their communities. The rule also assumes that individuals who receive a means-tested benefit have the resources available to pay immigration fees.

I. The proposed rule will impede individuals from obtaining immigration benefits, to the detriment of their and their families' long-term economic security and stability.

Immigration fees represent a significant cost, especially for low-income families. Fees have continued to increase, with the fees for critical applications increasing by more than 20 percent in 2016.¹ Not accounting for additional biometrics fees, the application for lawful permanent residency (Form I-485) is now \$1,140, the naturalization application is \$640 (Form N-400) and the certificate of citizenship (N-600) is \$1,170.² As a result, many low-income immigrants would be priced out of important immigration benefits—and the opportunity and economic mobility that accompany them—without the ability to qualify for a fee waiver.

The proposed changes will limit the type of evidence an individual can use to apply for a fee waiver using Form I-912, and as a result will discourage, delay or even bar individuals from applying for a fee waiver. The inability to obtain a fee waiver will prevent many individuals from obtaining or renewing critical immigration benefits, including applications for lawful permanent residency and naturalization.³ Without the stability and opportunity provided by lawful status, individuals and their families will experience significant hardship.

Research shows that access to lawful permanent residency and citizenship can help lift families out of poverty and create economic prosperity for immigrants and their children—as well as their communities.⁴ Lawful status and citizenship can help parents secure better paying jobs, open the door to additional public benefits and income supports, and reduce the stress associated with living without legal status. These benefits are passed down to children—especially when parents are able to obtain legal status early in their child’s life—leading to better educational and workforce outcomes when their children reach adulthood.⁵ By making it more difficult to qualify for a fee waiver and thereby delaying or barring the ability to apply for immigration benefits, this proposal is taking away a critical ladder to economic mobility for low-income immigrant families, with implications for generations.

Additionally, the proposed rule would harm the most vulnerable populations, including survivors of domestic violence, sexual assault, and human trafficking, who not only face challenges in paying the high fees but in being able to provide evidence of their financial need. Increasing the burden of proof necessary for a fee waiver will prevent vulnerable survivors from accessing the often life-saving legal protections for which they and their families are eligible. For over 20 years, USCIS has employed a flexible standard for survivor fee waivers to ensure they did not deter or deny eligible survivor applications.⁶ The excessive requirements in the proposed rule will cause unnecessary delay and burden for survivors and further drain the limited time, capacity and resources of service providers who assist them. Instead of requiring evidence that will increase the burden for survivors, USCIS should maintain flexible standards that recognize the dynamics of intimate partner violence and economic hardship and to conform to existing congressional authority.

II. The proposed rule will place a significant burden on individuals applying for immigration benefits, creating additional barriers to obtaining immigration benefits for which they are eligible.

Under the proposal, fee waivers will only be granted using Form I-912, requiring individuals to document their financial situation, including all assets, expenses, and liabilities and to provide supporting documentation. No longer would individuals be able to submit a letter or affidavit to demonstrate financial hardship as currently permitted. The proposal also requires *additional* documentation when submitting an I-912. For example, an individual must now provide 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. These additional requirements would create a significant time and resource burden for individuals, particularly those who would need to obtain legal assistance to fill out the form correctly and gather the necessary documentation. The proposed changes also increase the chances for error.

The proposal also requires each applicant to submit their own form, eliminating the current guidelines which allow couples and families to submit joint applications. Joint applications simplify the filing process because all relevant data is collected in one location, and requires the payment of a single fee. This is particularly beneficial when families apply for immigration benefits with minor children, or when couples apply for naturalization at the same time. According to this proposal, every applicant must now gather the required documentation being requested, such as an Internal Revenue Service (IRS) transcript, documentation showing they are not required to file federal taxes, and verification of the non-filing from the IRS. This is not only burdensome to the families applying for immigration benefits, but also increase the administrative burden on the IRS (which must respond to the additional requests for documentation) and on USCIS, which must review and approve each application separately. There is no reason to believe that members of a family will have different economic circumstances, so there is no justification for this additional burden.

Finally, the proposal eliminates the 2011 guidance allowing individuals to use proof of receipt of means-tested public benefits to demonstrate inability to pay the prescribed fee.⁷ Receipt of a means-tested benefit is sufficient

evidence of inability to pay, which is the intent of the requirements under 8 C.F.R. § 103.7(c). The purpose of the 2011 guidance was to make it easier for individuals to demonstrate financial hardship and make immigration benefits more accessible as detailed below. This builds on a widely accepted principle that people who have already demonstrated and documented their financial eligibility under one program should not have to provide the same information to an additional agency. Thus, for example, states may use income data collected under SNAP to determine Medicaid eligibility. This process saves both agencies and beneficiaries from unnecessary duplicative effort.

III. The proposed rule relies on the faulty premise that individuals who receive a means-tested benefit have the resources available to pay immigration fees.

Under the proposal USCIS states that it “has found that the various income levels used in states to grant means-tested benefit result in inconsistent income levels being used to determine the 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.” This change would result in elimination of the 2011 policy guidelines, PM-5602-011.1.

Means tested benefits are a simple, clear form of proof to document financial hardship and that an applicant does not have disposable income to pay immigration fees. USCIS appears to be willfully ignoring that receiving means-tested benefits demonstrates an individual’s financial need, the very reason that the fee waiver process was created. Forcing applicants to recreate the means-tested benefit criteria through other evidence is burdensome and will discourage many clients from pursuing the relief Congress intended for them. We believe it is critically important that the 2011 guidelines be maintained because they recognize the importance of using various mechanisms to determine financial hardship and the need to allow flexibility on a case-by-case basis. Allowing receipt of means-tested benefit to qualify for a fee waiver is also in line with state and local policies which set income guidelines for means tested benefits based on regional and local costs of living.⁸ The proposed rule would create a national poverty-guideline threshold that ignores the lived reality of low-income immigrants, who are dispersed throughout the country, including large concentrations in high-cost counties like Los Angeles and San Francisco.⁹ The Interagency Technical Working Group on Developing a Supplemental Poverty Measure (SPM) found that a more accurate poverty measure would incorporate regional variations in the cost of living, and this recommendation has been incorporated into the Census Bureau’s SPM.¹⁰ Individuals who have already passed a thorough income eligibility screening by government agencies should not have to prove their eligibility again for the purpose of immigration benefits.

The rule assumes that individuals who have received means-tested benefits are able to pay for the fee and have received waivers erroneously. Yet, USCIS fails to provide any evidence that accepting proof of receipt of a means-tested benefit has led to individuals receiving fee waivers who were able to pay. By removing the receipt of means-tested benefits as evidence for a fee waiver USCIS is creating additional barriers to critical immigration benefits for low-income immigrants who are already struggling to make ends meet and who need legal status to improve their financial situation. The impact would be devastating for thousands of families every year. In calendar year 2017, more than 331,000 individuals applied for a fee waiver, including almost 40 percent of citizenship applicants applied for a fee waiver, the majority of which were based on receipt of a means-tested benefit.¹¹

In conclusion, we urge USCIS to withdraw this rule in its entirety and maintain current guidelines. As anti-poverty experts, we believe that the proposed changes will create additional barriers to low-income families and prevent them from obtaining critical immigration benefits that can help pull them and their families out of poverty. The proposed changes are short-sighted and seek to close the doors of opportunity on immigrants already raising their families in the United States and contributing to their communities. Rather than create additional barriers to

citizenship, USCIS should be committed to working towards more inclusive policies that open the doors of opportunity to every member of our community.

We thank you again for opportunity to submit these comments. If you have additional questions, you can contact Wendy Cervantes, Senior Policy Analyst, at wcervantes@clasp.org or 202-906-8059.

¹ U.S. Citizenship and Immigration Services, *USCIS Announces Final Rule Adjusting Immigration Benefit Application and Petition Fees*, Department of Homeland Security, October 24, 2018, <https://www.uscis.gov/news/news-releases/uscis-announces-final-rule-adjusting-immigration-benefit-application-and-petition-fees>.

² U.S. Citizenship and Immigration Services, *Our Fees*, Department of Homeland Security, Last Reviewed/Updated April 20, 2018, <https://www.uscis.gov/forms/our-fees>.

³ U.S. Citizenship and Immigration Services, *Request for Fee Waiver USCIS Form I-912*, Department of Homeland Security, Last Reviewed/Updated: 08/13/2018, <https://www.uscis.gov/sites/default/files/files/form/i-912.pdf>.

⁴ Demetrios G. Papademetriou, Madeline Sumpton, Will Somerville, *The Social Mobility of Immigrants and Their Children*, Migration Policy Institute, 2009, <https://www.migrationpolicy.org/research/social-mobility-immigrants-and-their-children>.

⁵ Lisa A. Keister, Jody Agius Vallejo, E. Paige Borelli, *Mexican American Mobility: An Exploration of Wealth Accumulation Trajectories*, Stanford Center on Poverty and Inequality, 2013, https://inequality.stanford.edu/sites/default/files/media/_media/working_papers/keister_agius-vallejo_borelli_mexican-american-mobility.pdf.

⁶ Congress codified the use of fee waivers in humanitarian cases in the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, specifically stating that DHS **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. William Wilberforce Trafficking Victims Protection Reauthorization Act. Section by section 201(d)(7), Public Law No: 110-457 (December 23, 2008), available at: <https://www.congress.gov/110/plaws/publ457/PLAW-110publ457.pdf>. [Emphasis added]

⁷ U.S. Citizenship and Immigration Services, *Policy Memorandum: PM-602-0011.1, Fee Waiver Guidelines as Established by the Final Rule of the USCIS Fee Schedule; Revisions to Adjudicator's Field Manual (AFM) Chapter 10.9, AFM Update AD11-26*, Department of Homeland Security, March 13 2011, https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2011/March/FeeWaiverGuidelines_Established_by_the_Final%20Rule_USCISFeeSchedule.pdf

⁸ Michael B. Sauter, "Cost of living: The purchasing power of a dollar in every state," *USA Today*, May 10, 2018, <https://www.usatoday.com/story/money/economy/2018/05/10/cost-of-living-value-of-dollar-in-every-state/34567549/>.

⁹ Migration Policy Institute, *U.S. Immigrant Population by State and County*, <https://www.migrationpolicy.org/programs/data-hub/charts/us-immigrant-population-state-and-county>.

¹⁰ Interagency Technical Working Group, "Observations From the Interagency Technical Working Group on Developing a Supplemental Poverty Measure," U.S. Census Bureau, March 2010, available at www.census.gov/content/dam/Census/topics/income/supplemental-poverty-measure/spm-twgobservations.pdf.

¹¹ U.S. Citizenship and Immigration Services, *USCIS Fee Waiver Policies and Data*, Department of Homeland Security, September 27, 2017, <https://www.dhs.gov/sites/default/files/publications/USCIS%20-%20Fee%20Waiver%20Policies%20and%20Data.pdf>.