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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

THE CITY OF SEATTLE, IMMIGRANT
LEGAL RESOURCE CENTER, CATHOLIC
LEGAL IMMIGRATION NETWORK, INC.,
SELF-HELP FOR THE ELDERLY,
ONEAMERICA, AND CENTRAL
AMERICAN RESOURCE CENTER OF
CALIFORNIA,

Plaintiffs,

vs.

DEPARTMENT OF HOMELAND
SECURITY, KEVIN MCALEENAN,
KENNETH T. CUCCINELLI, AND UNITED
STATES CITIZENSHIP AND
IMMIGRATION SERVICES,

Defendants.

Case No. 3:19-cv-07151

**DECLARATION OF JEFF CHENOWETH
IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

I, Jeff Chenoweth, hereby declare as follows:

1. I have personal and professional knowledge of the matters set forth herein. I would testify to the facts in this declaration under oath if called upon to do so.
2. I am the Capacity Building Director at Catholic Legal Immigration Network, Inc. ("CLINIC"), a 501(c)(3) based in Silver Spring, Maryland.
3. CLINIC objected three times to USCIS's proposed changes to the fee waiver. Its first comment, submitted to USCIS via regulations.gov on November 27, 2018, is attached to this declaration as **Exhibit A**. CLINIC's second comment, submitted via email to

1 dhsdeskofficer@omb.eop.gov, is attached to this declaration as **Exhibit B**. CLINIC's third
2 comment, submitted via email to dhsdeskofficer@omb.eop.gov, is attached to this declaration as
3 **Exhibit C**.

4
5 **CLINIC's Mission**

6 4. CLINIC is the nation's largest network of nonprofit legal immigration services
7 programs. CLINIC's mission is to provide immigration legal services to low income and
8 vulnerable populations. The network includes approximately 370 affiliated immigration
9 programs, which operate out of more than 400 offices in 49 states and the District of Columbia.
10 The network includes faith-based institutions, farmworker programs, domestic violence shelters,
11 ethnic community-focused organizations, libraries and other entities that serve immigrants.
12 CLINIC's network employs more than 2,300 attorneys, accredited representatives and paralegals
13 who, in turn, serve hundreds of thousands of low-income immigrants each year.
14

15
16 5. Members of the network, referred to as "affiliates," provide naturalization
17 services using materials, training, education, best practices, and sometimes funding provided by
18 CLINIC. 96 percent of CLINIC affiliates provide legal services related to naturalization. CLINIC
19 estimates that its affiliate network completes 35,000 to 40,000 naturalization applications per
20 year.
21

22 **Naturalization Funding**

23
24 6. CLINIC receives funding from a variety of sources, including grant funding from
25 the New Americans Campaign ("NAC"), led by the Immigrant Legal Resource Center ("ILRC").

26 7. As a requirement of its NAC funding, CLINIC, through its subgrantees, is
27 required to complete and submit 9,159 naturalization applications between July 1, 2019 and June
28

1 30, 2020. Failure to complete the requisite number of naturalization applications could result in
2 the loss of this funding.

3
4 8. CLINIC's NAC funding supports the equivalent of two and a half full-time staff,
5 specifically for the purpose of providing project management oversight to 29 funded partners in
6 15 communities in 12 states¹ in addition to conducting immigration law training and case
7 consultations, designing program best practices, developing materials such as practice advisories
8 and toolkits, monitoring and reporting on local performance outcomes, and providing technical
9 support to NAC subcommittee work.

10
11 9. CLINIC has provided up to \$20,000,000 in flow-through funding to local
12 nonprofits in 36 states² to provide naturalization outreach and application assistance. Nonprofits
13 include faith-based (up to 15 faith traditions) and non-sectarian nonprofits that are separately
14 incorporated by the IRS as 501(c)(3) charitable organizations. Naturalization work includes
15 public education materials in non-English languages, community events for questions and
16 answers, multi-media public service announcements, legal screening, one-on-one legal
17 representation, in-house clinics focusing on a single immigration benefit, large-scale group
18 application workshops, application form completion, filing forms with USCIS, legal
19 representation, case management, and administrative advocacy in addition to English and
20 naturalization test preparation assistance. CLINIC typically requires quarterly or semi-annual
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24
25 ¹ States include Arkansas, Arizona, California, Colorado, Florida, Georgia, Minnesota, New
26 York, North Carolina, Pennsylvania, Texas, and the District of Columbia.

27 ² States include Alaska, Arkansas, Arizona, California, Colorado, Connecticut, Florida, Georgia,
28 Hawaii, Illinois, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Mississippi,
Missouri, Nebraska, Nevada, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania,
Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, and the
District of Columbia.

1 reports on numbers of persons reached, number of applications completed and filed, and
2 demographic data of applicants served. NAC reporting is quite extensive beyond these data
3 points.
4

5 **a. CLINIC's Affiliate Network**

6 10. CLINIC's over 370 affiliates run the gamut from large to very small
7 organizations, and include organizations that only focus on naturalization and organizations that
8 provide a wide-array of immigration legal services.
9

10 11. CLINIC affiliates employ not only attorneys but also United States Department of
11 Justice ("DOJ")-Accredited Representatives. Accredited representatives are non-attorney staff or
12 volunteers who are approved by the DOJ to represent noncitizens in USCIS proceedings in
13 immigration court, and before the Board of Immigration Appeals. An accredited representative
14 must work for a non-profit or social service organization that provides low- or no-cost
15 immigration legal services. Approximately 45 percent of CLINIC affiliates rely on DOJ-
16 Accredited Representatives for the day-to-day work of their organization. In turn, those DOJ-
17 Accredited Representatives rely on CLINIC's resources for training and guidance.
18
19

20 12. CLINIC affiliates pay an annual affiliate fee to be a part of the CLINIC network.
21 In return, affiliates get a discount on CLINIC's web-based and in-person trainings, and in some
22 cases have access to affiliate-only trainings. Trainings take the form of webinars, online courses
23 (both self-directed and with multiple classes), and workshops during our annual affiliate
24 convening. These trainings cover everything from best practices for running naturalization
25 workshops to correctly completing the N-400 naturalization application.
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1 13. CLINIC also provides technical support to its affiliates through the “Ask-the-
2 Experts” portal on its website. Attorneys and accredited representatives from affiliates submit
3 inquiries regarding individual immigration matters that are particularly complex, and CLINIC
4 staff provide an expert consultation. In a typical week, CLINIC attorneys provide ten to eleven
5 consultations on complex naturalizations cases.
6

7 14. CLINIC’s Training and Legal Support section, which organizes the trainings
8 described above, employs eight full-time attorneys. The primary duties of these eight attorneys
9 are to serve as training faculty and provide technical assistance.
10

11 **CLINIC’s Workshop Model**

12 15. 93 percent of CLINIC affiliates offer assistance with fee waivers and 50 percent
13 utilize workshop models in their program design. Fee waivers based on receipt of means-tested
14 benefits (“MTB”) are *the* tipping point factor that allow CLINIC affiliates that serve low-income
15 clients by providing efficient, streamlined service through the workshop model. This model
16 allows for the maximum number of people to be served—a critical component of CLINIC’s
17 mission.
18

19 16. A naturalization workshop is a one-day community event that brings professionals
20 and trained volunteers together to assist Lawful Permanent Residents (“LPR”) in completing the
21 N-400 naturalization application, including fee waiver requests.
22

23 17. The workshop is an essential tool for efficiently and effectively providing
24 naturalization assistance to large numbers of people. The success of the workshop model
25 depends on careful planning, thorough training of staff and volunteers, and high-quality services.
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1 18. CLINIC provides training for those organizing and hosting a workshop as well as
2 for volunteers and staff who assist attendees in completing their naturalization applications.

3 19. CLINIC provides trainings for a “mega” workshop that can assist over 500
4 applicants, “large” workshops that can serve 150 to 400 applicants, and smaller workshops
5 designed to assist 10 to 20 applicants.
6

7 20. CLINIC trains affiliates conducting naturalization workshops to provide attendees
8 with a worksheet so they can gather information on their employment, addresses, and trips
9 outside the United States for the past five years. Whenever possible, these worksheets are
10 provided prior to the workshop.
11

12 21. The average CLINIC affiliate reports submitting approximately 120 fee waivers
13 per year (almost all based on receipt of a MTB). Attendees who will be applying for a fee
14 waiver are told to bring documents including evidence of a MTB and/or income level. Most
15 naturalization fee waivers are completed in the workshop setting using volunteers who need little
16 training to recognize a MTB.
17

18 22. CLINIC affiliates’ naturalization workshops are generally six to eight hours in
19 length. Volunteers spend roughly two-to-four hours per naturalization applicant, including those
20 applying for a fee waiver.
21

22 **Harm to CLINIC and its Affiliates from Changes to the Fee Waiver Process**

23 a. **Decimation of the Naturalization Workshops**

24 23. CLINIC estimates that at least 40 percent of applicants attending a workshop
25 qualify to request a full or partial fee waiver under the previous policy that permitted fee waivers
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1 based on MTBs The workshop model is the most-used process by which CLINIC affiliates
2 participating in the NAC and many others in its network provide fee waiver assistance.

3
4 24. Using “fee waiver stations” at workshops will likely be eliminated due to the
5 time-constraint of the new policy and form. CLINIC will now need to revert to a previous option
6 lacking a station and scheduling people for one-on-one appointments in the office. Even before
7 the fee waiver changes, CLINIC affiliates has a tight appointment schedule; now CLINIC
8 believes that most clients will have to wait a month to be seen by a CLINIC affiliate.
9

10 25. These one-on-one, in-office appointments are the most costly use of a legal
11 representative’s (that is, an attorney or DOJ-Accredited Representative) time. The addition of
12 one-on-one appointments will reduce time in the legal representative’s calendar to see other
13 clients who pay fees to the nonprofit.
14

15 26. CLINIC anticipates that most low-income applicants will need case management
16 services to help them gather the documentation required, especially a tax transcript given the
17 IRS’s requirements to acquire one online. CLINIC estimates that it may take legal
18 representatives up to four hours to gather information IRS requires to make an online. This
19 calculation is based on the assumption that the applicant is able to request a tax transcript online
20 (which is possible only if the applicant has (1) information from past tax records, (2) an email
21 address, (3) a personal account number for a credit card, mortgage, home equity loan, home
22 equity line of credit, or car loan, and (4) a mobile phone with the taxpayer’s name on the
23 account). If the applicant does not have the requisite information, requesting tax transcript by
24 mail take five to ten days, and in turn will fast outpace the additional time estimated by CLINIC
25 affiliates.
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1 27. CLINIC's affiliates estimate that preparing a fee waiver based on the Federal
2 Poverty Guidelines will take at least 45 minutes more than MTB applications due to the extra
3 documentation needed to prove household income, the required submission of a federal income
4 tax transcript, and the length of the relevant section of Form I-912. This estimation is for a
5 naturalization applicant attending a workshop who brings all of the documentation necessary to
6 make an initial determination that an income-based fee waiver can be successfully completed
7 within the confines of a workshop event. Thus, once the fee waiver changes go into effect, it
8 will be necessary to have highly trained volunteers or actual experts staff the fee waiver station at
9 the workshop, adding to the complexity of managing a fee waiver station, if one is maintained at
10 all.

11 28. However, CLINIC anticipates that very few low-income applicants will be able to
12 come to a workshop event with all the necessary documentation in hand. This in turn will
13 require the applicant to be scheduled for a one-on-one appointment at a nonprofit skilled to
14 complete Form I-912 fee waiver request, which as explained above will strain the resources of
15 CLINIC affiliates.

16 29. In sum, CLINIC and its affiliates believe that the elimination of fee waivers based
17 on MTBs will severely disable the naturalization workshop model, if not eliminate its use
18 altogether for the lowest income LPRs across the country. Disabling or eliminating the
19 workshop model will result in far fewer applicants assisted because: completing naturalization
20 applications will become more burdensome to applicants and legal representatives preparing
21 form I-912 fee waiver request; require additional resources including more volunteers and
22 volunteer hours at workshops; and low-income immigrants will opt-out of the opportunity to
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1 apply, as more people seeking a fee waiver at workshops will find themselves ineligible and
2 return home disappointed, spreading the word that naturalization isn't accessible or feasible as it
3 once was before the fee waiver changes.
4

5 **b. Immediate Diversion of Resources**

6 30. CLINIC faces immediate harm if the proposed fee waiver changes are put into
7 effect. As the hub of the largest network of immigration service providers, CLINIC is charged
8 with analyzing every significant change to immigration law and policy, and pushing out
9 digestible information to hundreds of organizations and thousands of practitioners nationwide.
10 The proposed fee waiver change will require the same, but at a much larger scale because
11 naturalization is the first or second most frequently provided service by CLINIC affiliates and a
12 significant percentage of naturalization applicants, up to 40 percent, seek fee waiver assistance.
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14

15 31. While serving the most low-income applicants possible is at the heart of the
16 affiliates' missions, it will be more costly to serve more naturalization applicants. The proposed
17 changes will have an immediate and tangible impact on the day-to-day work of CLINIC
18 affiliates. Each practitioner will immediately need to know how to assist clients under the new
19 rules; CLINIC's job will be to tell them what to do. All 2,000-plus affiliate legal staff and their
20 volunteers will need to be trained on how to determine eligibility, instruct applicants on all the
21 documentary evidence to gather, re-assess eligibility based on the totality of the documents, enter
22 eligibility facts into their naturalization application database and complete the new form I-912
23 fee waiver request correctly. This is an increase in workload compared to seeing an applicant
24 with evidence of a MTB. This additional workload is similar to what every government-
25 employed assessor must do to determine if a low-income person is eligible for MTBs. As such,
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1 it is like asking immigration legal representatives to also take on the role and responsibilities of a
2 government assessor.

3
4 32. In response to the proposed change, CLINIC will immediately have to draft a
5 practice advisory from scratch. In the past, CLINIC only had to provide very minimal guidance
6 to affiliates regarding the I-912 fee waiver, because the vast majority of affiliate's clients used
7 the MTB option for proving eligibility. This method is extraordinarily simple and has a very high
8 rate of success. Because, as discussed, the fee waiver change makes the process much more
9 complex, difficult, and subjective, CLINIC will have to create brand new materials and analysis
10 for its practice advisory.
11

12 33. In addition, CLINIC will need to develop and present webinars on the changes.
13 CLINIC's affiliates depend on CLINIC to provide real-time and up-to-date guidance on
14 immigration law and policy. Thus, if the proposed changes go into effect, CLINIC will have to
15 provide timely training on how to successfully complete a fee waiver application under the new
16 rules, including but not limited to: how to request a tax transcript, the ethics around helping
17 clients with IRS-related matters, whether legal representatives can represent clients before the
18 IRS, and what documentation is necessary and sufficient for submitting a fee waiver application.
19

20 34. CLINIC will have to re-work some of its core existing trainings and materials.
21 CLINIC offers at least four trainings that will be impacted by the proposed change: the
22 Comprehensive Overview of Immigration Law ("COIL") course; Citizenship and Naturalization
23 course; a course on best practices for naturalization workshops; and a course on how to hold a
24 "mega workshop" (defined as a workshop with over 250 clients). This last course also comes
25 with a workbook that will have to be edited and republished.
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1 35. Additionally, CLINIC will have to rewrite chapters and advisories in its
2 Citizenship Toolkit (“Citizenship for Us”) and Naturalization Group Application Workshop
3 Toolkit. Each toolkit has over 100 documents that will need to be reviewed for fee waiver
4 relevance with some needing to be rewritten. CLINIC will need to write a newsletter article on
5 the proposed rule and another, in-depth article on the final rule. Multiple social media
6 announcements will need to be sent in addition to texts sent in six languages to members of
7 CLINIC’s Text4Refugees listserv. Each translation requires a cost and each text sent is a cost as
8 well.
9

10
11 36. Finally, we anticipate a significant uptick in the number of technical assistance
12 inquiries from affiliate attorneys and DOJ-Accredited Representatives resulting from the
13 replacement of a very straightforward fee waiver application process with one that requires
14 multiple levels of administrative requests, document gathering, and personal logistics. Based on
15 our experience, we also expect a higher rate of fee waiver denials, and subsequent technical
16 assistance inquiries related to the denials. Fee waiver denials are likely to increase as the burden
17 of documentation grows, especially for applicants who apply without legal assistance. More
18 denials are expected as the eligibility factors increase, rather than decrease, in complexity,
19 requiring more subjective review by USCIS.
20

21
22 37. In general, the fee waiver changes will result in an enormous amount of work for
23 current, as well as the additional CLINIC staff that will be required to address those changes.
24 This will require diversion of significant resources from other work. Much of the work that we
25 will have to initiate in response to the changes will be brand new work. But for the need to
26 respond to the changes to the fee waiver process, our staff would otherwise be devoting time to
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1 helping affiliates tackle difficult legal problems under existing law, or training and teaching on
2 other important issues.

3
4 38. CLINIC will have to respond, in the ways described in the above paragraphs,
5 within two to three days of the rule going into effect and in a concerted way for at least 30 days
6 thereafter, not to mention ongoing work to address the long-term impact of the rule change.

7
8 39. CLINIC estimates no less than \$11,000 in cost during the first 30 days of the new
9 rule going into effect, with up to \$7,000 just in the first week. The cost to CLINIC is ongoing as
10 it confronts month-by-month fee waiver inquiries to the attorney-of-the-day hotline and will have
11 to re-train legal representatives at its Annual Convening in May 2020 where the fee rule will
12 need to be prominent in the curricula.

13
14 40. If the rule is enjoined after it goes into effect, CLINIC will not recoup any of
15 these expenditures.

16 **c. Loss of Funding**

17 41. CLINIC's only funding source for naturalization services is through the NAC.
18 CLINIC is unaware of any other funding sources outside the NAC.

19
20 42. Due to the changes in the fee waiver process, it is anticipated that the trajectory of
21 NAC application numbers will decline rather increase as it has since 2011. As naturalization
22 applications for low-income immigrants decline in volume, CLINIC anticipates that funders will
23 divert funds from the NAC, reducing CLINIC's revenue. A decline each year of just ten percent
24 will have a negative, cumulative impact on the NAC's output and outcomes. A decline of ten
25 percent or more could result in fewer funders joining the NAC as donors rather than increase as
26 the trend has been so far. Fewer donors mean fewer dollars for the nonprofits participating in the
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1 NAC. Also, the board of directors of current donors are far less likely to sustain their giving for
2 a NAC affiliate that is declining in output and outcomes. This, too, will result in fewer dollars.
3
4 The NAC could become a shell of what it is today.

5 43. As result, CLINIC anticipates an ongoing loss of funding to its naturalization
6 program. Again, the impact of the policy and form changes is expected to suppress the volume of
7 future applications and also funder support. Loss of, or even reduced, funding will cause CLINIC
8 affiliates participating in NAC to reduce or layoff full-time NAC Project Coordinators. Loss of
9 staff time or positions altogether, in turn, will reduce or eliminate public outreach and education
10 leading people to workshops, diminish volunteer management time and new volunteers and pro
11 bono attorneys to replace those who drop-out, decrease the number of workshops that can be
12 organized, and create a longer wait for one-on-one appointments.
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15 44. In sum, CLINIC could expect to lose 30 to 40 percent, and maybe more, of
16 funding when the workshop model declines or collapses.

17 **d. Changes to the Fee Waiver Process Will Frustrate CLINIC's Mission**

18 45. The changes to the fee waiver process have the potential to deeply undermine
19 CLINIC and its affiliates' ability to provide naturalization assistance, particularly via the
20 workshop model, harming our mission of providing immigration legal services to low-income
21 and vulnerable population. Adjusting to the changes will require significant diversion of
22 resources to adapt our trainings, materials, and other internal resources. We will have to invest
23 additional resources to continue delivering citizenship assistance even as we expect that we will
24 face a drop in the number of naturalization applications completed as a result of the more
25 onerous fee waiver application process. As fewer naturalization applications are completed,
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1 CLINIC will experience a concomitant loss in funding, further exacerbating the losses resulting
2 from an expenditure of resources to address fee waiver changes.
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1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct to the best of my knowledge.
3

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5 Executed on November 6, 2019.
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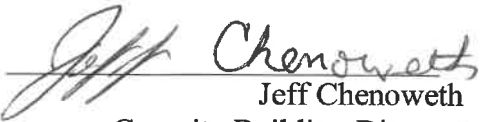
7 
8 Jeff Chenoweth
9 Capacity Building Director
10 Catholic Legal Immigration Network, Inc.
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EXHIBIT A



NATIONAL OFFICE

November 27, 2018

Submitted online via the Federal eRulemaking Portal

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 Immigrations, 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](http://www.ncsl.org/research/immigration/states-offering-driver-s-licenses-to-immigrants.aspx), 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](https://cliniclegal.org/resources/drivers-license-background/), Catholic Legal Immigr. Network, Inc., (Jan. 9, 2017), <https://cliniclegal.org/resources/drivers-license-background/>.

¹⁴ [USCIS Fee Waiver Policies and Data, Fiscal Year 2017 Report to Congress](http://www.dhs.gov/sites/default/files/publications/USCIS_Fee_Waiver_Policies_and_Data.pdf), 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](http://populardemocracy.org/sites/default/files/C4C%20CPD%20NPNA%20America%20is%20Home%20Report%209-12-18%20FINAL.pdf), 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, 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

EXHIBIT B



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/publ457/PLAW-110publ457.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

EXHIBIT C



Submitted via email to: dhsdeskofficer@omb.eop.gov

July 5, 2019

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

RE: OMB Control Number 1615-0116; USCIS Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions 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.

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 submitted a second comment on the same USCIS proposal on May 3, 2019.³ We have attached those comments, for the record, and present this comment in response to USCIS's notice published June 5, 2019, allowing an additional 30 days for public comment, or "June 5 notice," to supplement and reiterate our response. 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-uscis-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.

³ *CLINIC Public Comment Opposing USCIS Changes to Fee Waivers*, CLINIC (May 3, 2019), <https://cliniclegal.org/resources/clinic-public-comment-opposing-uscis-changes-fee-waivers>.

I. General Comments

CLINIC opposes USCIS' proposed changes to the fee waiver and recommends that USCIS withdraw its proposal. Two previous notices were published regarding USCIS's proposal to eliminate receipt of a means-tested benefit as an eligibility criterion for a waiver of filing fees for certain immigration benefits. In disallowing the receipt of means-tested benefits as a way to establish eligibility for a fee waiver, most applicants would be left with establishing their eligibility for a waiver by proving that their income is below 150 percent of the Federal Poverty Guidelines. The Federal Poverty Guidelines provide an inaccurate and too narrow basis for determining "inability to pay" as required by the regulations.

The Federal Poverty Guidelines are uniform for the 48 contiguous states, and do not take the cost of living of any state or locality into account, despite drastic differences in the cost of living across the country. The Bureau of Economic Analysis measures differences in cost-of-living through its regional price indexes, which compare buying power across all 50 states and the District of Columbia.⁴ "That data shows that, according to the most recent available data, the price of goods and services was 36 percent higher in the District of Columbia, the highest-priced location in the contiguous states, than it was in Mississippi, the lowest-priced location. Looking at specific municipalities, both San Francisco and New York had price levels more than 20 percent above the national average.

The Massachusetts Institute of Technology has developed a Living Wage Calculator to determine the minimum that families need to spend on food, childcare, health insurance, housing, transportation, and other basic necessities across a range of different family structures and localities.⁵ This, too, reveals significant disparities in cost of living. Whereas the required annual income (before taxes) for a family of two adults and two children with one working adult is \$50,433 in Mississippi, it is \$60,105 in New York State.

These wide discrepancies in the cost of living result in the Poverty Guidelines failing to reflect the reality on the ground for many U.S. residents. For instance, according to data from the U.S. Department of Housing and Urban Development (HUD), the median income for a family of four in the Seattle metropolitan area in 2019 is \$108,600.⁶ Based on this median income, HUD (which does not rely on the Poverty Guidelines) considers a family of four earning less than \$88,250 to be "low income" and potentially eligible for rental assistance. However, according to the Federal Poverty Guidelines, they would not qualify for assistance because their income is *more than 300 percent* of the Federal Poverty Guidelines and significantly more than the national median income. Of course, the fact that a family living in a high-cost area makes more than 300 percent of the static Federal Poverty Guidelines does not mean they do not need assistance—a fact HUD recognized and adjusted for.

The federal government has recognized that these discrepancies limit the usefulness of the Poverty Guidelines in certain states and localities, and has allowed states and federal agencies to use different measures of an applicant's "inability to pay" in administering federally-funded means-tested benefit programs.

These proposed changes to the fee waiver form and procedures would directly affect our organization and its affiliates. For example, in Washington State, CLINIC works with many organizations and networks providing low-cost legal services throughout the state including Catholic Charities, Jewish Family Service, Lutheran Community Services, and the Korean Women's Association. There, the Basic Food program is available to anyone earning less than 200 percent of the Federal Poverty Guideline, reflecting

⁴ Bureau of Economic Analysis, *Real Personal Income for States and Metropolitan Areas, 2017* (May 16, 2019), www.bea.gov/news/2019/real-personal-income-states-and-metropolitan-areas-2017.

⁵ Massachusetts Institute of Technology, *Living Wage Calculator*, <http://livingwage.mit.edu/>.

⁶ U.S. Dep't of Housing and Urban Development, Office of Policy Development and Research (PD&R), *Income Limits, 2019*, www.huduser.gov/portal/datasets/il.html.

the higher cost of living in that state.⁷ This means a family of four is eligible for nutrition assistance if it earns up to \$51,000—even though the family would not be “poor” under the Federal Poverty Guidelines. Recipients of Basic Food in Washington State have already undergone a much more suitable and customized determination of their ability to pay for the essential needs of their families through the state’s means-tested benefit than the one-size-fits-all Federal Poverty Guideline test suggested by the proposed rule. In the interests of efficiency and expediency, USCIS should continue to give deference to the determinations of state agencies that are the subject-matter experts in the determination of poverty levels in the context of their own local economic conditions.⁸

For these reasons, the Federal Poverty Guidelines, taken alone, are an inadequate measure of an individual’s ability to pay for significant expenditures outside their daily needs, including the immigration filing fees. Preventing USCIS adjudicators from considering receipt of means-tested benefits, and requiring them to look only at the Federal Poverty Guidelines and evidence of financial hardship, blinds the agency to significant differences in cost of living that the federal government considers and accommodates in countless other settings.

II. Reasons for the Changes

The June 5 notice reiterated a previously stated reason for making these changes – that various income levels across states used to determine eligibility for means-tested benefits cause fee waivers to be issued at inconsistent income levels, so this change is meant to introduce a consistent measure. As described above and in our previous comments, differing income levels to determine ability to pay on a state-by-state basis take into account local realities like cost of living and the Federal Poverty Guidelines do not. Even if fee waivers are granted at differing income levels across states under the means-tested-benefit criterion, USCIS did not establish a rational connection⁹ between this practice and the applicants’ actual ability to pay the fee. The June 5 notice does not provide any additional data to back up USCIS’ assertions or address the fact that ability to pay is highly dependent on cost of living, which the state-by-state evaluation of means-tested benefits takes into account. Therefore, these concerns have not been addressed and still remain as a barrier to finalizing this proposed rule, since a rational basis for this regulatory change has not been established.

The June 5 notice adds a new reason for the changes: that USCIS is foregoing increasing amounts of revenue, and expects that it may need to increase the fees it charges for other benefit requests. CLINIC’s comment dated May 3 noted that, “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.” The June 5 USCIS notice ensures that this intention is no longer just suggested, but is explicit. One of the primary uses of the fee waiver is for the unaffordable Naturalization fee that has increased 663 percent

⁷ Washington State Department of Social and Health Services, Washington Basic Food Program, www.dshs.wa.gov/sites/default/files/ESA/csd/documents/Basic%20Food_Q_and_A.pdf.

⁸ USCIS’ long-standing reliance on the determinations of state and local agencies granting means-tested benefits gives rise to efficiencies akin to the principle of collateral estoppel. See, e.g., *Bath Iron Works Corp. v. Office of Workers’ Comp. Programs*, 125 F.3d 18, 21–23 (1st Cir. 1997) (“[A] federal agency is normally bound to respect findings by another agency acting within its competence.”); *West Helena Sav. & Loan Assoc. v. Federal Home Loan Bank Bd.*, 553 F.2d 1175, 1180-81 (8th Cir.1977) (“[I]t seems unlikely that Congress intended for the [Federal Home Loan Bank] Board in evaluating an initial application ... to re-examine the underlying question of economic need for the proposed service.... Such a re-examination would involve both a needless duplication of administrative effort and the possibility of needless friction between the Board and the state agencies.”); *Safir v. Gibson*, 432 F.2d 137, 143-44 (2d Cir.) (Friendly, J.), cert. denied, 400 U.S. 850, 91 S.Ct. 57, 27 L.Ed.2d 88 (1970) (“[T]he reason for applying res judicata to administrative agencies is not only to 'enforce repose' but also to protect a successful party from being vexed with needlessly duplicitous proceedings.”).

⁹ See *Motor Vehicle Manufacturers Association v. State Farm Auto Mutual Insurance Co.*, 463 U.S. 29 (1983) (finding that an agency must explain the evidence, which is available, and must offer a “rational connection between the facts found and the choice made.”).

since 1997. Congress has called on USCIS to keep the pathway to citizenship affordable and accessible.¹⁰ 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.”¹¹ USCIS’ proposed changes to filing fee waivers would severely undermine Congressional intent.

By stating a concern for foregone revenue as a reason to institute this change, USCIS confirms that it understands that its proposed changes will result in fewer applicants qualifying for a fee waiver, and that stopping revenue loss related to the fee waiver is their desired outcome. This is an inappropriate reason to make these changes, since it is clear that Congress understood and intended that USCIS would forego revenue when it called on USCIS to continue to use fee waivers to keep the pathway to citizenship affordable and accessible. It is USCIS’ responsibility to appropriately manage the use of the fees collected from other benefit requests to offset revenue foregone for fee waivers.

III. Administrative Procedure Act, or APA, and Paperwork Reduction Act, or PRA

The June 5 USCIS notice also added information about its determinations with regard to the applicability of the Administrative Procedure Act, or APA, and the Paperwork Reduction Act, or PRA. USCIS states that it has determined that the proposed changes do not alter the substantive standards they use to evaluate applications and the changes will not adversely affect any substantive rights of the affected parties, and therefore is not required to use the APA’s notice-and-comment procedures under the exception for interpretive or procedural rules. USCIS’ conclusion that no substantive rights would be affected is directly contradicted by its confirmation that some applicants would become ineligible for fee waivers, but USCIS has not demonstrated that those who would be disqualified have the actual ability to pay the filing fee, which is the standard set by 8 C.F.R. 103.7 (c).

USCIS claims that applicants do not have a *right* to receive a fee waiver. However, congressional intent as cited above indicates that Congress is relying on USCIS’ continuation of its long-standing practice of keeping the pathway to citizenship affordable through fee waivers as it considers appropriations and other legislative actions. Even if USCIS’s obligation is to Congress rather than to the applicants, it nonetheless creates a *de facto* right for qualified applicants who demonstrate their inability to pay to receive fee waivers.

Furthermore, the standard stated by USCIS, that the changes will not adversely affect the “rights” of parties, omits an essential part of the standard as stated in the case that USCIS cites in its notice: *James v. Hurson Associates, Inc. v. Glickman*.¹² In *James*, the court stresses that in order to satisfy the “procedural exception” to the APA, the proposed change must not alter the “rights or *interests* of parties...”, referring to a standard confirmed in its precedent case, *JEM Broad Co. v. FCC*.¹³ Even if USCIS were to stand by its dubious assertion that these changes would not affect applicants’ rights, the changes certainly substantially affect applicants’ interests. USCIS explicitly confirms in the June 5 notice that certain groups of applicants would lose their eligibility even to apply for a fee waiver if the evidence of their inability to pay does not fit the narrowed criteria. As a result, some qualified applicants would lose access to critical immigration benefits solely based on inability to pay. These applicants undoubtedly have a significant interest in adjusting their status to that of a lawful permanent resident and proceeding to

¹⁰ H. Rep. No. 115-948 accompanying H.R. 6776, the Department of Homeland Security Appropriations Act (2019).

¹¹ *Id.* [Emphasis added].

¹² *James v. Hurson Associates, Inc. v. Glickman*, 229 F.3d 277 (D.C. Cir. 2000).

¹³ *Id.* at 280, quoting *JEM Broad. Co. v. FCC*, 22 F.3d 320, 326 (D.C. Cir. 1994) (emphasis added).

the next step of acquiring citizenship. Naturalization, for example, is associated with statistically significant increases in rates of employment, income, and home ownership.¹⁴

In fact, the court in *JEM* states that the changes in question “employed the same substantive criteria as their predecessors,” so they were defined as procedural changes. In contrast, the changes to the fee waiver form and procedures currently proposed by USCIS explicitly remove one of three criteria for adjudication, and would issue guidance that would not allow evidence of receipt of means-tested benefits to be considered to determine ability to pay. The fee waiver regulation at 8 C.F.R. 103.7(c) states no such limitation on the reasons for inability to pay or the kinds of evidence that may be submitted in support. The regulation only requires a written request with the person’s “belief that he or she is entitled to or deserving of the benefit,” the reasons for the inability to pay, and evidence to support the reasons indicated.¹⁵ The proposed changes are irreconcilable with the underlying regulation. Noted Administrative Law professor Michael Asimow wrote, “If a second rule repudiates or is irreconcilable with [a prior legislative rule], the second rule must be an amendment of the first; and, of course, an amendment to a legislative rule must be legislative.”¹⁶ Therefore, the proposed changes go beyond a simple amendment of a prior interpretive or procedural rule,¹⁷ and are equivalent to a new legislative rule that is required to go through Notice and Comment under the APA.

IV. Conclusion

For the above stated reasons regarding the impropriety of utilizing the Federal Poverty Guidelines to determine ability to pay, insufficient and inappropriate reasons for these changes, and deficiencies under the APA, CLINIC strongly opposes the proposed changes to fee waivers and recommends the proposal be withdrawn in its entirety. 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, Advocacy Director, at jbussey@cliniclegal.org should you have any questions about our comments or require further information.

Sincerely,



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Director of Advocacy
Catholic Legal Immigration Network, Inc.

¹⁴ See Jie Zong and Jeanne Batalova, “Naturalization Trends in the United States.” *Migration Policy Institute* (Aug. 10, 2016), available at <https://www.migrationpolicy.org/article/naturalization-trends-united-states>.

¹⁵ 8 C.F.R. 103.7(c).

¹⁶ Michael Asimow, Nonlegislative Rulemaking and Regulatory Reform, 1985 Duke L.J. 381, 396.

¹⁷ USCIS’s June 5 notice cites *Perez v. Mortgage Bankers Ass’n*, 134 S. Ct. 1199 (2015) which overturned a D.C. Circuit doctrine that required an agency to go through APA notice and comment procedures for an interpretive rule if it changed or repealed a previous interpretive rule. This case is inapposite in the present circumstance, as the rule in question in *Mortgage Bankers* had been determined to be an interpretive rule and not a legislative rule.