



November 27, 2018

Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Service
Department of Homeland Security
20 Massachusetts Ave., NW
Washington, DC 20529-2140

RE: USCIS-2010-0008, OMB Control Number 1615-0116; Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions
Submitted via www.regulations.gov

Dear Ms. Deshommes:

ASISTA respectfully submits this comment to U.S. Citizenship and Immigration Service Agency Information Collection Activity; “Revision of Currently Approved Collection: Requests for Fee Waivers; Exemptions” published in the Federal Register on September 28, 2018 (hereinafter “proposed revisions”).¹ These proposed revisions relate to Form I-912; Request for Fee Waiver and accompanying guidance.²

ASISTA is a national organization dedicated to safeguarding and advancing the rights of immigrant survivors of violence. ASISTA worked with Congress to create survivor-based forms of immigration relief through the Violence Against Women Act (VAWA) and for 15 years has provided attorneys and advocates nationwide with valuable resources to help survivors access the services and status they need to achieve safety and independence.

¹ U.S. Citizenship and Immigration Service. “Agency Information Collection Activity; Revision of Currently Approved Collection: Requests for Fee Waivers; Exemptions,” (hereinafter “Proposed Revisions”) Federal Register, Vol 83, No.189, September 28, 2018, pg. 49120, available at <https://www.gpo.gov/fdsys/pkg/FR-2018-09-28/pdf/2018-21101.pdf>

² USCIS is proposing revisions to existing fee waiver guidance located at PM-602-0011.1 “Fee Waiver Guidelines Established by the Final Rule of the USCIS Fee Schedule: Revisions to Adjudicator Field Manual (AFM) Chapter 10.9, AFM Update AD11-26.(March 13, 2011), available at: <http://bit.ly/2011USCISFeeWaiverGuidelines> (hereinafter “Fee Waiver Guidelines”).

We stridently oppose these proposed revisions to the I-912 fee waiver application and instructions as well as any corresponding changes to the USCIS Policy Memorandum, PM-602-0011.1.³ While the proposed revisions will apply to applications eligible for fee waivers generally, these revisions will disproportionately impact immigrant survivors of domestic violence, sexual assault, human trafficking and other crimes applying for humanitarian protections. We call on USCIS to immediately withdraw the proposed revisions because they will limit access to critical protections for survivors of violence created under the Violence Against Women Act (VAWA) and the Trafficking Victims Protection Act (TVPA).

I. Flexible Fee Waiver Standards are Critical for Immigrant Survivors of Violence

Many immigrant survivors of domestic violence, sexual assault, and human trafficking fear that reaching out for help will result in their deportation.⁴ Abusers and perpetrators of crime often prey on that same fear: "[o]ne of the most intimidating tools abusers and traffickers of undocumented immigrants use is the threat of deportation. Abusers and other criminals use it to maintain control over their victims and to prevent them from reporting crimes to the police."⁵ A bipartisan majority in Congress created these forms of immigration relief because it recognized that survivors may not be willing to reach out for help because of the threat or fear of removal.⁶

³ Proposed Revisions at 49121.

⁴ A 2017 survey conducted by a coalition of national agencies revealed that "three out of four advocates report that immigrant survivors are concerned about going to court for a matter related to their abuse, and 78% reporting they have concerns about calling the police." Key Findings: 2017 Advocate and Legal Service Survey Regarding Immigrant Survivors, available at: <https://www.tahirih.org/pubs/key-findings-2017-advocate-and-legal-service-survey-regarding-immigrant-survivors/> See also Cora Engelbrecht. "Fewer Immigrants Are Reporting Domestic Abuse: Police Blame Fear of Deportation" New York Times (June 3, 2018), available at <https://www.nytimes.com/2018/06/03/us/immigrants-houston-domestic-violence.html>

⁵ See Stacey Ivie et al. "Overcoming Fear and Building Trust with Immigrant Communities and Crime Victims", Police Chief Magazine (April 2018), available at http://www.policechiefmagazine.org/wp-content/uploads/PoliceChief_April-2018_F2_Web.pdf See also Matthew Haag. "Texas Deputy Accused of Molesting 4-year-old and Threatening to Deport Her Mother" New York Times (June 18, 2018), available at <https://www.nytimes.com/2018/06/18/us/cop-molests-girl-deport-mother.html>;

⁶ See H.R. REP. NO. 103-395, at 26-27 (1993)(stating "Consequently, a battered spouse may be deterred from taking action to protect him or herself, such as filing for a civil protection order, filing criminal charges, or calling the police, because of the threat or fear of deportation. Many immigrant women live trapped and isolated in violent homes, afraid to turn to anyone for help. They fear both continued abuse if they stay with their batterers and deportation if they attempt to leave"). See also Section 1513(a)(2)(A), Public Law No: 106-386, 114 Stat. 1464 (2000) (indicating that Congress created the U and T visa program to "strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of domestic violence, sexual assault, trafficking...and other crimes...committed against aliens, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States.")

Though the applications for survivor-based relief themselves do not have a fee,⁷ applicants must often file ancillary forms that do have a significant fee.⁸ Congress recognized that ensuring equal access to these protections is crucial, especially for survivors who may have few financial resources of their own. For this reason, Congress codified the use of fee waivers in certain humanitarian cases in the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, specifically stating that DHS **shall permit applicants to apply for a waiver of any fees associated** with filing a VAWA self-petition, a T or U visa application, or an application for VAWA cancellation or suspension of deportation.⁹

Fee waivers have been and are absolutely essential for immigrant survivors to access life-saving protections. Over the past two decades, USCIS has maintained a certain flexibility in the documentation necessary for fee waivers adjudication for VAWA self-petition, U and T visa cases in the express recognition of the immense economic hardship that survivors of violence often encounter.¹⁰

This flexibility is critical given the economic realities that survivors often face. While intimate partner violence permeates all income levels, there is research cited by Center for Disease Control and Prevention that indicates that intimate partner victimization is associated with economic, food and housing insecurity.¹¹ Experts note that “batterers create economic instability for their partners through economic sabotage and control. And poverty, in turn,

⁷ There is no fee, for example for an I-360 application for a VAWA self-petitioner or Applicant for Special Immigrant Juvenile Status. See <https://www.uscis.gov/i-360>. Similarly, there is no fee for an application for U nonimmigrant status or T nonimmigrant Status, See also, <https://www.uscis.gov/i-918> and <https://www.uscis.gov/i-914>

⁸ For example, an I-765, Application for Employment Authorization currently has a \$495 fee; See <https://www.uscis.gov/i-765> ; an I-192 Application for Advance Permission to Enter as a Nonimmigrant has a \$930 fee See <https://www.uscis.gov/i-192>; an I-485 application to Register Permanent Residence or Adjust Status ranges in fees from \$750 to \$1,225, See <https://www.uscis.gov/i-485>

⁹ 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)), available at: <https://www.congress.gov/110/plaws/publ457/PLAW-110publ457.pdf>. [Emphasis added].

¹⁰ INS. “Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children” 61 Fed. Reg. 13061, 13069 (March 29, 1996), available at: <https://www.gpo.gov/fdsys/pkg/FR-1996-03-26/pdf/96-7219.pdf> ; See also USCIS. “New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status” 72 Fed. Reg. 53014, 53021 (Sept. 17, 2007), available at <https://www.gpo.gov/fdsys/pkg/FR-2007-09-17/pdf/E7-17807.pdf>. See also USCIS. “Classification for Victims of Severe Forms of Trafficking in Persons; Eligibility for ‘T’ Nonimmigrant Status” 81 Fed. Reg. 92266, 92288 (Dec. 19, 2016) (discussing fee waiver history in T visa context), available at: <https://www.gpo.gov/fdsys/pkg/FR-2016-12-19/pdf/2016-29900.pdf>

¹¹ NISVS. “An Overview of Intimate Partner Violence in the United States — 2010 Findings”, available at <https://www.cdc.gov/violenceprevention/pdf/ipv-nisvs-factsheet-v5-a.pdf>

creates increased vulnerability to violence and additional barriers to safety.”¹² In addition, domestic violence is also one of the leading causes of homelessness for women in the United States.¹³

Abusers commonly prevent survivors from accessing or acquiring financial resources in order to maintain power and control in the relationship.¹⁴ In one study, 99% of domestic violence victims reported experiencing economic abuse.¹⁵ Furthermore, survivors may be forced to stay with abusers because they depend on them for financial support or housing. In a 2012 survey, three out of four victims said they stayed with their abusers longer for economic reasons.¹⁶

In addition, experiencing physical, psychological or economic abuse can affect a survivor’s ability to obtain or maintain stable employment.¹⁷ A survey of survivors conducted by the Maine Department of Labor indicated that abuse affected a survivor’s “performance and productivity, including being constantly harassed at work, delayed getting to work, or

¹² Sara J. Shoener and Erika A. Sussman. “Economic Ripple Effect of IPV: Building Partnerships for Systemic Change” Domestic Violence Report. August/September 2013, available at: https://csaj.org/document-library/Shoener_and_Sussman_2013_-_Economic_Ripple_Effect_of_IPV.pdf

¹³ Department of Housing and Urban Development “Point in Time Count of Homeless Persons: Engaging with Domestic Violence Survivors: What CoCs Need to Know” available at <https://www.hudexchange.info/resources/documents/PIT-and-DV-What-CoCs-Need-To-Know.pdf> (noting that “survivors of violence face complex barriers to shelter and housing that are caused by the power and control dynamics of abuse, which result in financial instability, lasting trauma, and a need for safety and confidentiality. These factors are exacerbated for marginalized and vulnerable communities, such as persons of color and persons living in rural areas.”). See also Amber Clough et al. “Having Housing Made Everything Else Possible”: Affordable, Safe and Stable Housing for Women Survivors of Violence” (2014), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4196210/> (stating For women who have experienced intimate partner violence, access to safe housing and economic resources are two of the most pressing concerns for those who are planning to or have recently left abusers)

¹⁴ This is known as economic or financial abuse, which is “behavior that seeks to control a person’s ability to acquire, use, or maintain economic resources, and threatens their self-sufficiency and financial autonomy.” NNEDV. “Financial Abuse Fact Sheet” <https://nnedv.org/?mdocs-file=10108>; See also https://www.huffingtonpost.com/2014/10/21/domestic-violence_n_6022320.html

¹⁵ Adrienne E. Adams. “Measuring the Effects of Domestic Violence on Women’s Financial Well-Being” Center for Financial Security-University of Wisconsin-Madison (2011), available at <https://centerforfinancialsecurity.files.wordpress.com/2015/04/adams2011.pdf>

¹⁶ Mary Kay. “2012 Truth About Abuse Survey Report” available at: http://content2.marykayintouch.com/public/PWS_US/PDFs/company/2012Survey.pdf

¹⁷ Institute for Women Policy Research. “The Economic Cost of Intimate Partner Violence, Sexual Assault, and Stalking” (August 2017), available at: https://iwpr.org/wp-content/uploads/2017/08/B367_Economic-Impacts-of-IPV-08.14.17.pdf; See also Michelle Chen. “The Economic Costs of Domestic Violence” The Nation (Sept. 20, 2017), available at <https://www.thenation.com/article/the-economic-costs-of-domestic-violence/> (reporting that a 2005 survey of survivors found that two-thirds had suffered direct impacts on their work performance).

prevented from going to work. As a result, 60 percent of victims in the study reported having either quit their job or being terminated as a result of the abuse.”¹⁸

Thus, many survivors need fee waivers to access the vital survivor-based immigration protections Congress created. They may be fleeing abuse, may not have resources to pay for fee-based ancillary forms, nor have access to primary forms of evidence to demonstrate their economic need. Yet, through these proposed revisions, USCIS is now creating unnecessary barriers for survivors to access safety and justice.

II. The Proposed Revisions Impose an Unreasonable Evidentiary Burden for Fee Waivers

The proposed revisions counter decades of prior policy and practice by restricting the documentation to support a fee waiver request. While fee waiver adjudication is a distinct determination from a merits decision on a survivor's application, USCIS thwarts the will of Congress when it imposes an evidentiary standard for fee waivers that constructively blocks access to the legal protections Congress created for survivors like VAWA self-petitions, U visas and T visas. USCIS must not, whether intentionally or not, deter immigrant victims of crimes from pursuing the relief intended by Congress.

A. USCIS must apply the Congressionally mandated "any credible evidence" standard

When creating the special protections for survivors, a bipartisan majority in Congress realized the evidentiary challenges that immigrant survivors often face¹⁹ and mandated the special "any credible evidence" standard for these forms of relief.²⁰ USCIS has acknowledged and explained how and why they must apply this standard in survivor-based applications like VAWA self-petitions, U visa and T visa applications.²¹

¹⁸ Institute for Women Policy Research. "The Economic Cost of Intimate Partner Violence, Sexual Assault, and Stalking" (August 2017), available at: https://iwpr.org/wp-content/uploads/2017/08/B367_Economic-Impacts-of-IPV-08.14.17.pdf

¹⁹ Memorandum from T. Alexander Aleinikoff, Exec. Assoc. Comm'r, Immigration and Naturalization Service (Apr. 16, 1996) at 5, available at http://www.asistahelp.org/documents/filelibrary/documents/Aleinikoff_41696_1B42EBEED3605.pdf (stating For abused spouses, evidence normally available in family-based marriage petitions may not be accessible because of the dynamics of domestic violence. The former Immigration and Nationality Service repeatedly advised that "adjudicators should give due consideration to the difficulties some self-petitioners may experience in acquiring documentation, particularly documentation that cannot be obtained without the abuser's knowledge or consent.")

²⁰ See e.g. INA 204(a)(1)(J), INA 214(p)(4)

²¹ Paul Virtue. INS General Counsel. HQ 90/15-P. "Extreme Hardship and Documentary Requirements Involving Battered Spouses and Children," (No date on Document), available at: <http://bit.ly/INSCredibleEvidenceMemo> (Hereinafter "Virtue Memo"); See also 8 CFR 214.14(c)(4); 8 CFR 214.11(d)(2)(ii). The credible evidence standard is also used in other survivor protections, see e.g. PM-602-0130. Eligibility for Employment Authorization for Battered Spouses of Certain Nonimmigrants (March 8, 2016).

In the context of VAWA self-petitions, for example, USCIS must consider “any credible evidence’ and does not require that the [survivor] demonstrate the unavailability of primary or secondary evidence.”²² Moreover, “[a] self-petition may not be denied for failure to submit particular evidence. It may only be denied on evidentiary grounds if the evidence that was submitted is not credible or otherwise fails to establish eligibility.”²³

Former INS guidance states:

“[B]attered spouse... self-petitioners are not likely to have access to the range of documents available to the ordinary visa petitioner for a variety of reasons. Many self-petitioners have been forced to flee from their abusive spouse and do not have access to critical documents for that reason. Some abusive spouses may destroy documents in an attempt to prevent the self-petitioner from successfully filing. Other self-petitioners may be self-petitioning without the abusive spouse’s knowledge or consent and are unable to obtain documents for that reason. **Adjudicators should be aware of these issues and should evaluate the evidence submitted in that light.**”²⁴

The proposed revisions run counter to the “any credible standard” in three principal ways: 1) the elimination of the means-tested benefit criteria for the fee waivers, 2) the requirement that applicants must submit the Form I-912 in lieu of applicant’s declaration comporting with 8 CFR 103.7(c) and 3) the limitation on the evidence that USCIS will consider to demonstrate income eligibility for fee waivers. (e.g. additional documentation like tax transcripts or a verification of non-filing).

Moreover, the proposed revisions conflict with the clear will of Congress that crime survivors not be precluded from seeking status due to inability to pay fees²⁵ or due to their inability to present primary evidence to prove their claim.²⁶ With these proposed revisions, USCIS imposes a higher evidentiary standard on fee waivers than it would on the underlying petitions. USCIS must adopt a flexible approach to fee waivers, as it has in the past, one that recognizes the barriers to documentation and economic resources survivors face. To conform with the manifest intent of Congress, USCIS must consider means-tested benefits and applicant-generated proof of income and expenses, both of which may be “credible evidence.” It must

²² Virtue Memo at 4.

²³ *Id.* [Emphasis added]

²⁴ Virtue Memo at 5. [Emphasis added]

²⁵ See Congressionally mandated fee exemptions, *supra* note 9.

²⁶ See Congressionally mandated “any credible evidence” standard, *supra* note 20.

refrain from insisting on "primary evidence" or any specific piece of evidence in violation of the any credible evidence standard.

B. Elimination of Means-Tested Benefit Criteria for Fee Waivers Will Harm Survivors

For survivors of domestic violence, sexual assault and human trafficking, means-tested benefits support basic economic security and independence and are, therefore, critically important.²⁷ Survivors of intimate partner violence, sexual assault and human trafficking may often be fleeing abusive living situations, may not have their own income source, or else their partners control primary documents. Some survivors may be facing critical deadlines related to their cases or otherwise may not have time nor the ability to obtain documents such as tax transcripts or verification of non-filing.

Using receipt of means-tested benefits as a stand-alone criteria for survivors is a simple, straightforward way to present their economic need without relying on documentation that may be unsafe or burdensome to obtain. By eliminating the means-tested benefit criteria for fee waivers, USCIS is eliminating one of the most unambiguous forms of evidence of financial hardship. We ask that USCIS restore receipt of means-tested benefits as a form of proof for fee waiver requests.

C. USCIS Should Continue to Accept "Applicant-Generated" Fee Waiver Requests

The requirement that applicants must submit an I-912 in lieu of a declaration and supporting evidence that outlines the factors in the regulations runs counter to existing pattern and practice where an applicant could submit a declaration and/or other supporting documents to comply with the requirements indicated in the regulations at 8 CFR 103.7(c). USCIS should continue to accept "applicant-generated" fee waiver requests (such as a letter, declaration or affidavit) that demonstrate an applicant or a petitioner is eligible for a fee waiver.

Eliminating this currently accepted form of request places an additional and unnecessary hardship on survivors to locate, complete, and submit the Form I-912. For *pro se* survivors, for survivors with limited English proficiency, as well as for service providers that work with a high-volume caseload, the requirement of the I-912 is an unnecessary burden. The I-912 form itself is a complex eleven-page form, with eleven pages of instructions. It is often easier for survivors and those who serve them to use applicant generated fee requests to demonstrate income,

²⁷ See Shaina Goodman. NCRDV "The Difference between Surviving and Not Surviving Public Benefits Programs and Domestic and Sexual Violence Victims' Economic Security" (January 2018), available at https://vawnet.org/sites/default/files/assets/files/2018-10/NRCDV-TheDifferenceBetweenSurvivingandNotSurviving-UpdatedOct2018_0.pdf

expenses and the reasons the applicant or petitioner is unable to pay the immigration fees. These applicant-generated forms of proof comport with the requirements of 8 CFR 103.7(c) and with the any credible evidence standard.

USCIS's own guidance states that while the I-912 fee waiver application was created to help standardize requests, the use of a USCIS form is NOT mandated by regulation, so USCIS will continue to consider "applicant-generated" fee waiver requests that comply with 8 CFR 103.7(c).²⁸ Moreover, the regulations do not specify that any particular form of proof must be used to show inability to pay, just that such a showing must be made. USCIS has not sufficiently justified its rationale for making the Form I-912 a requirement, nor explained how such a *sine qua non* requirement complies with the any credible evidence standard.

Furthermore, the proposed revisions require that each applicant and derivative family member submit separate fee waivers instead of one fee waiver submission for an entire family unit. Not only is this inefficient, it will cause delays and impose a burden on survivors Congress could not have intended.

D. Requiring Documentation of Income Will Create Delay and Burdens for Survivors

Instead of requiring evidence for fee waivers that imposes barriers to status for survivors, USCIS should maintain the flexible standards required by Congress that recognize the dynamics of intimate partner violence and economic hardship. The new IRS documentation requirement proposed by USCIS seems designed to discourage survivor access to status. The proposed revisions indicate that applicants who apply for a fee waiver based on having income level at or below 150% of the federal poverty guidelines must also request the required documentation from the IRS in order to prove their eligibility. In addition, all changes in employment, or non-employment, inability to work, or need to file will require an IRS verification.

Many survivors may not, for a myriad of reasons, have access to the documents the proposed revisions indicated. Survivors may not have access to their tax documentation because they may be still living with their abusers, or recently fled an abusive situations and not know how to obtain the requested documentations. Survivors with low English proficiency or in remote locations may also have difficulty obtaining the required documentation under this criteria. The information contained in the IRS documents may instead be shown with 1) evidence survivors may already have safely available like federal tax returns or pay stubs; 2) credible

²⁸ PM-602-0011.1 "Fee Waiver Guidelines Established by the Final Rule of the USCIS Fee Schedule: Revisions to Adjudicator Field Manual (AFM) Chapter 10.9, AFM Update AD11-26.(March 13, 2011), available at: <http://bit.ly/2011USCISFeeWaiverGuidelines> (hereinafter "Fee Waiver Guidelines")

documentation submitted by other agencies, such as affidavits from shelters or community-based organizations; or 3) verification of receipt of a means-tested benefit.

The proposed revisions will cause additional hardship for service providers, especially those who serve survivors of domestic violence, sexual assault and human trafficking who are applying for humanitarian protections. The limitations on documents to show eligibility for a fee waiver will cause unnecessary delay and burden for survivors and further drain limited time, capacity and resources of service providers who assist them.

Making the documentation requirements for fee waivers more stringent will exacerbate already existing barriers that survivors face accessing fee waivers on humanitarian protections. Prior to the issuance of these proposed revisions, USCIS began altering its fee waiver adjudication practice for survivors without notice. Hundreds of service providers expressed their concern about the impact they witnessed on the survivors they help and their ability to continue providing services to them.²⁹

Rather than discouraging survivors from accessing protections, USCIS should strive to remove barriers to status for those who are most vulnerable. The agency should, therefore, expand the types of documentary evidence it accepts, not restrict them.

III. Eliminating the Means-Tested Benefit Criteria for Fee Waivers Ignores Income Disparity Nationwide

USCIS justifies the elimination of the means-tested benefit criteria because it “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.”³⁰ But this is exactly how means-testing benefits *should* work.³¹ Given that the cost of living is so varied nationwide, state agencies in some cases use their own criteria to determine income eligibility for means-tested

²⁹ See Sign on Letter to USCIS signed by 232 national, state, and local organizations, available here: http://www.asistahelp.org/documents/filelibrary/Sign_on_letter_Fee_Waivers_77E9AAA07F76C.pdf. The consequences of these unannounced changes are significant. Practitioners and applicants must spend critical and limited resources preparing and re-submitting denied applications. There does not seem to be any consistent rationale between which fee waivers are granted and which are denied. In numerous cases, critical deadlines passed because initial fee waivers were denied. These fee waiver denials are often any recourse for these individuals in order to preserve their initial filing date.

³⁰ Proposed Revisions at 49121.

³¹ See Fee Waiver Guidelines at 5. (defining a means-tested benefit as “a benefit where a person’s eligibility for the benefit, or the amount of the benefit, or both, are determined on the basis of the person’s income and resources, including those that may lawfully be deemed available to the person by the benefit-granting agency. Examples of means-tested benefit programs are Supplemental Nutrition Assistance Program, Medicaid, Supplemental Security Income, and Temporary Assistance for Needy Families.”

benefits. A family of four living at 150% of the federal poverty guideline (\$37,650)³² in Mississippi would have to earn approximately \$50,374, (nearly 34% more) to achieve the same standard of living in New York.³³ For this reason, eligibility for means-tested benefits tends to vary by state.

The rationale for using means-tested benefits as a criteria for fee waivers is that the applicant's financial hardship has been pre-established by a state agency. In order to receive benefits under a means-tested program, individuals or families often have to establish their eligibility based on their own lack of income and/or assets. State agencies administering means-tested benefits must screen for financial hardship and inquire about an applicant's assets like property, savings, as well as their income level before determining whether an applicant qualifies for a benefit. Therefore, receipt of a means-tested benefit by definition means that an individual is of limited means and that said benefit is necessary to help meet their basic needs.

This is a straightforward criteria for determining fee waiver eligibility, and USCIS' rationale for excluding it is unjustified. Receipt of means-tested benefits *per se* demonstrates an individual's financial need, as defined by the state which knows best what is necessary to live above the poverty line within its boundaries. USCIS should continue to accept receipt of means tested benefits as evidence of an applicant's "reasons for their inability to pay" under the regulations.³⁴

IV. The Proposed Revisions Are Flawed in Execution

USCIS indicated that if the agency "proceeds with the form revision after considering public comment it will also rescind the 2011 Fee Waiver Guidelines and issue new guidance on fee waivers consistent with the changes made to Form I-912."³⁵ The proposed revisions are essentially a significant and substantive policy change disguised as form revision. It is unclear why USCIS is proceeding in this peculiar order. Changes to official USCIS policy guidance must be done in accordance with the law and follow the appropriate process and procedure,

³² See Form I-912P Supplement, 2018 HHS Poverty Guidelines for Fee Waiver Requests, available at <https://www.uscis.gov/i-912p>

³³ Federal Reserve Bank of Saint Louis. "Cost of Living Calculator", available at <https://research.stlouisfed.org/publications/cost-of-living/calculator>

³⁴ 8 CFR 103.7(c)

³⁵ Proposed Revisions at 49121.

including a comment period. Furthermore, USCIS failed to post the form revisions for the full 60-day period necessary for review.³⁶

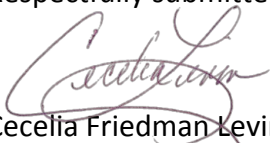
A. The proposed revisions ignore significant survivor protections at 8 U.S.C. § 1367.

The new form asks applicants to self-identify as a survivor by asking whether they are applying for status as an abused spouse of an A, G, E-3, or H nonimmigrant, a battered spouse or child of a legal permanent resident or U.S. Citizen under 240A(b)(2); a T nonimmigrant, a person with Temporary Protected Status, a U nonimmigrant or a VAWA self-petitioners. Most of these types of relief, with the exception of Temporary Protected Status, are subject to certain protections and sanctions regarding privacy, confidentiality, and presumptions against evidence from abusers and perpetrators, codified at 8 USC 1367.³⁷ Neither the USCIS privacy notices on the I-912 instructions,³⁸ nor the Requestors Certification on the I-912 form³⁹ contain language that mentions these critical protections for survivors. USCIS must make clear in both of these sections that any disclosure or receipt of information complies with the protections at 8 USC 1367.

Conclusion

Fee waivers provide an essential pathway for survivors to seek justice and safety. We urge USCIS to withdrawal the proposed revisions and to instead expand the types of documentary evidence accepted to establish eligibility for a fee waiver. Only in this way will USCIS ensure that the survivors of domestic violence, sexual assault and human trafficking Congress intended to help access these protections.

Respectfully submitted,



Cecelia Friedman Levin
Senior Policy Counsel, ASISTA

³⁶ See Agency Information Collection Activities; Form I-912; Request for an Individual Fee Waiver, Instructions and Form revisions were posted on October 1, 2018, available at <https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&D=USCIS-2010-0008&docst=Form>

³⁷ See USCIS Policy Manual-Chapter 5 Privacy and Confidentiality in Customer Service, available at <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume1-PartA-Chapter5.html>

³⁸ Supporting and Related Material, Instructions for Form I-912, Request for Fee Waiver, (posted October 1, 2018) available here: <https://www.regulations.gov/document?D=USCIS-2010-0008-0152>

³⁹ Supporting and Related Material Form I- 912, Request for Fee Waiver (posted October 1, 2018), available here: <https://www.regulations.gov/document?D=USCIS-2010-0008-0153>