**USCIS’ Proposed Revisions to Fee Waivers: ASISTA Template Comment July 2019**

On June 5, 2019, USCIS published another notice and opportunity for comment on their [proposed fee waiver changes](https://www.federalregister.gov/documents/2019/06/05/2019-11744/agency-information-collection-activities-revisi). These changes were initially proposed in [September 2018](https://www.regulations.gov/document?D=USCIS-2010-0008-0144), and later addressed in a second opportunity for comment [in April 2019](https://www.federalregister.gov/documents/2019/04/05/2019-06657/agency-information-collection-activities-revision-of-a-currently-approved-collection-request-for-fee#addresses). This latest notice provides additional details regarding USCIS’ rationale for adjusting the fee waiver form and practices. We encourage you to review this new notice, which can be found [here](https://www.federalregister.gov/documents/2019/06/05/2019-11744/agency-information-collection-activities-revision-of-a-currently-approved-collection-request-for-fee). This is the third opportunity to oppose these harmful changes to fee waiver form and guidance, which limits the criteria and types of evidence for fee waiver adjudication. We encourage all stakeholders to submit comment to show the impact of these changes on survivors and their families.

To have the most impact, your comment submission should be **in your own words and based upon your agency’s concerns and interests.** Please individualize your comments with **your own reasons and experiences**, especially focusing on how the proposed fee waiver changes would **burden survivors and your agency**. In particular:

* How will **eliminating the means-tested benefit grounds** for fee waiver harm the immigrant survivors and families with whom you work? How will this change harm your agency?
* How will the new changes in the updated form [instructions](https://www.regulations.gov/document?D=USCIS-2010-0008-1251) and new I-912 [form](https://www.regulations.gov/document?D=USCIS-2010-0008-1253), including requiring **additional documentation to show household income**, harm your clients and your agency? (For a table of changes, see [here](https://www.regulations.gov/document?D=USCIS-2010-0008-1250))
* **IMPORTANT:** If giving examples, please take all appropriate measures to protect client confidentiality, including using a pseudonym, not listing specific locations, etc.

The Immigrant Legal Resource Center (ILRC) also posted an updated template comment[**HERE**](https://www.ilrc.org/fee-waiver-template-comment-submit-july-5-2019), which is customizable and addresses a wide range of concerns with the fee waiver memo and updated forms. In addition, Asian Americans Advancing Justice in Los Angeles have also released a template comment, which is available [**HERE.**](https://advancingjustice.salsalabs.org/protectfeewaivers/index.html)Feel free to adjust your comment to incorporate any of these additional issues.

**Deadline and How to File**

Deadline for submission is **July 5, 2019**

Comments may be submitted via **email** to the OMB USCIS Desk Officer at [*dhsdeskofficer@omb.eop.gov*](mailto:dhsdeskofficer@omb.eop.gov)*.* All submissions received must include in the subject line the government agency name (USCIS), and the OMB Control Number 1615-0116. Sample subject line for your email: **“USCIS Information Collection Activity, OMB Control Number 1615-0116”.**

Be sure to also include your name and the name of your agency in the comment. For more information on *how* to file, click [here](https://www.federalregister.gov/documents/2019/06/05/2019-11744/agency-information-collection-activities-revision-of-a-currently-approved-collection-request-for-fee)**.**

DATE

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

*Submitted via email to* [*dhsdeskofficer@omb.eop.gov*](mailto:dhsdeskofficer@omb.eop.gov)

Dear OMB USCIS Desk Officer:

On behalf of agency, I am submitting this response to the third notice and request for public comment published in the Federal Register on June 5, 2019 entitled “U.S. Citizenship and Immigration Service Agency Information Collection Activity; Revision of a Currently Approved Collection: Requests for Fee Waivers; Exemptions.”[[1]](#footnote-1) This agency information collection was initially published on September 28, 2018[[2]](#footnote-2) and later addressed in a second request for comment in April 5, 2019.[[3]](#footnote-3) The proposed revisions contained in all three announcements relate to Form I-912; Request for Fee Waiver and include the rescission of an accompanying policy memorandum (hereinafter “proposed revisions”).[[4]](#footnote-4)

[Insert a paragraph about your agency’s mission and its experience working with immigrant survivors of domestic violence, sexual assault, human trafficking and/or children who have suffered abuse, abandonment or neglect.

[Include sentence about why your agency is concerned about the fee waiver changes].

Given our mission and our work with survivors, we 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.[[5]](#footnote-5) We are disheartened that USCIS continues to pursue these proposed revisions to the fee waiver form and policy memorandum despite widespread opposition.[[6]](#footnote-6)

We call on OMB to reject USCIS’ proposed revisions to the fee waiver form and guidance as they will cause significant additional burdens for individuals applying for immigration benefits, including survivors of domestic violence, sexual assault and human trafficking.[[7]](#footnote-7) These proposed revisions will also enormously burden [organizations like ours that are] service providers that assist them[[8]](#footnote-8) In addition, USCIS’ proposed elimination of the means-tested benefit criteria for fee waivers lacks “practical utility” as it wilfully excludes a reliable and useful method to demonstrate financial hardship.[[9]](#footnote-9)

[If you submitted a comment in either of the first two comment periods, please write about your comments here and whether USCIS addressed your concerns]

**I. The Proposed Revisions Ignore the Purpose of Fee Waivers**

When the proposed revision was first announced in September of 2018 and later opened for additional comment in April 15, 2019, USCIS justified the elimination of the means-tested benefit criteria for fee waivers 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.”[[10]](#footnote-10) While the June 5, 2019 Federal Register announcement contains no substantive changes to the I-912 form or instructions, it reiterates this deeply-flawed rationale and now adds an additional justification for the proposed revisions to the fee waiver form and guidance, namely to “curtail the rising cost of fee waivers.”[[11]](#footnote-11)USCIS now states that “without changes to fee waiver policy it will continue to forgo increasing amounts of revenue as more fees are waived. As a result, USCIS expects that DHS will be required to increase the fees that it charges for benefit requests for which fees are not waived.”[[12]](#footnote-12)

The purpose of fee waivers is to make immigration benefits accessible to those who demonstrate an economic need and an inability to pay.[[13]](#footnote-13) Access to secure immigration benefits including naturalization, can lead to an increase in an individual’s wages, create stability for family members and contribute to the economic growth of our country as a whole.[[14]](#footnote-14) For crime survivors in particular, access to immigration benefits is essential to escape abusive situations, and gain self-sufficiency following victimization. For this reason, the criteria for fee waivers should be based upon ***an applicant’s*** economic need, and not USCIS’ budget.

USCIS’ justification to limit access to fee waivers for those with an economic hardship in order to bolster its own coffers is harmful to victims, and unsupported by any evidence. USCIS has provided no information about how the proposed revisions will improve the “consistency” of fee waiver adjudication, nor evidence that fee waivers were erroneously granted under the current framework. Furthermore, USCIS has provided no supporting details about how the proposed revisions will impact the agency’s fee structure.

What is undoubtedly clear from this June 5th Announcement is that USCIS seeks to limit access to fee waivers and reduce the number of fee waiver approvals.[[15]](#footnote-15) While USCIS claims that the proposed revisions will not adversely affect the rights of applicants, the current experience of survivors whose fee waivers are denied indiscriminately belie that claim. We are seeing denial of survivors’ access to immigration relief because they cannot pay the fee. This cannot be the result that Congress intended. This is especially true when fee waivers are denied for appeals and other time-sensitive forms, which essentially cut off a survivor's options for review. [Give examples if appropriate, taking measures to maintain client confidentiality]. It appears that USCIS is using policy changes like this to weaken access to benefits for those who need them most.

**II. The Proposed Revisions Will Cause Undue Burden to Survivors and Service Providers**

**If you submitted a prior comment, note whether the June 5th announcement addressed your concerns and if not, you can restate them here.**

1. **The Proposed Revisions Will Cause Additional Burdens for Survivors**

The survivors we assist often need fee waivers to access the vital immigration protections Congress created in the Violence Against Women Act (VAWA) and Trafficking Victims Protection Act (TVPA). They often are fleeing abusive situations [insert examples]. Survivors often lack the resources to pay for fee-based ancillary forms and, may not have "primary documentation" (tax transcripts, paystubs) to demonstrate their economic need.

[Insert examples of financial hardship that are common for crime survivors (including those that may or may not have a connection to the abuse suffered) ]

Congress recognized 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 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.[[16]](#footnote-16)

For over 20 years, USCIS has followed Congress' mandate, employing a flexible standard for survivor fee waivers, thereby ensuring they did not deter or deny eligible survivor applications. While the USCIS Response to Public Comments acknowledges the importance of this flexible response,[[17]](#footnote-17) it does not fix the problem. For instance, USCIS has adjusted the fee waiver instructions and I-912 form to indicate that VAWA self-petitioners, U visa applicants and T visa applicants need not present information about the spouse’s income in their fee waiver application.[[18]](#footnote-18) While this is a step in the right direction, it is entirely insufficient to address the barriers survivors face and the explicit Congressional intent that inability to pay should not prevent access to status. We remain deeply concerned that USCIS is still unjustifiably limiting access to fee waivers for immigrants, including survivors and their families.

USCIS has stated that it does not believe that the proposed revisions will be an “excessive burden” on respondents.[[19]](#footnote-19) They are incorrect. For example, the I-912 instructions state that applicants must provide a transcript of EACH household member’s tax return and, if not available, seek other documentation (e.g. IRS Form 1099-G, W-2 form, etc.) to prove income.[[20]](#footnote-20) Though survivors may not need to include income of an abuser, survivors may still need to obtain tax transcripts from other household members, including adult children or another family member which can be an onerous and burdensome process.

* Explain how obtaining this additional tax transcripts for other household members documentation may be a hardship, including language and technology access, for individuals who may be in shelters ,etc.

USCIS states that “The changes to Form I-912 do not prevent applicants from filing applications or petitions. Applicants who cannot afford, or claim they cannot afford, the fee could still apply for a fee waiver and may still qualify." [[21]](#footnote-21) USCIS also points to the ability of lawful permanent residents who can wait to naturalize as an example of why it is not burdensome to encourage applicants to save money to pay fees.[[22]](#footnote-22) Without addressing the disputable accuracy of this statement, it is completely inapposite when applied to crime survivors, who need to secure status to escape abusers and perpetrators. For instance, although the U visa itself does not require a fee, other forms, such as waivers for inadmissibility, do require a fee or fee waiver.

Describe cases in which USCIS VSC did not comply with existing fee waiver regulations and guidance, including if your clients have supplied credible documentation of financial hardship but been denied fee waivers.

Explain in your experience, how obtaining documentation from IRS or other agency has delayed or could delay the timely filing of survivor-based applications and the impact on your client for missing deadlines. (e.g. prevent age-out of derivatives, or filing an U visa with a I-192 waiver within six months of I918B certification, as I-192s are considered [“initial evidence”](https://www.uscis.gov/i-918) for U visa applications with inadmissibility issues, or for U or T adjustment of status).

Whether intentional or not, the proposed revisions will act as barriers to status for the crime survivors we serve, barriers Congress could not have intended when it mandated fee waivers for crime survivor applications.

[insert example of hardship to survivors when fee waivers are denied].

**B. The Proposed Revisions Will Cause Additional Burdens to Service Providers**

Based upon USCIS’ existing policies on fee waivers, the proposed revisions will further exacerbate the hardship to service providers such as [our agency].

[Please provide additional details of how changes in fee waiver policy will harm your agency and increase your workload, especially for non-profit agencies. How much of your caseload require fee waivers? What additional barriers will this cause? (e.g. the increased work means you would serve fewer individuals, and/or must re-allocate limited resources at the expense of other core services, and/or increased time and resources for attorney and staff training on the IRS forms and processes, and how that would harm your ability to help survivors generally

**C. USCIS should not require an individual I-912 for each family member**

The requirement that each family member must supply his or her own I-912 fee waiver is needlessly duplicative and burdensome. It will cause unnecessary delay and hardship for survivors and further drain the limited time, capacity and resources of those of us who assist them.

USCIS believes that the impact of having each family member fill out their own I-912 will be “minimal” as 90% percent of Form I-912 filings were filed for one person on one form.[[23]](#footnote-23) Our agency, however, often assists survivors with fee waiver requests that include multiple family members. Not only are the proposed revisions inefficient, they will cause delays and barriers for survivors.

[Give example of how having to file separate I-912s for each family member would be burdensome for a survivor and their family and your agency]

D. **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 runs counter to decades-long pattern and practice where an applicant could submit a declaration and/or other supporting documents to comply with the requirements 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.

How long your agency has used applicant-generated fee requests with success on survivor-based cases? How has this helped both them and your agency? How will taking away this ability impact survivors and your practice?

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 form, with multiple pages of instructions. It is often easier for survivors and those who serve them to use applicant-generated fee requests to show an applicant’s income, expenses and the reasons the applicant or petitioner is unable to pay the immigration fees. Moreover, these applicant-generated forms of proof comport with the requirements of 8 CFR 103.7(c).

**III. Means-tested Benefits Are Sufficient Evidence to Demonstrate an Inability to Pay Immigration Filing Fees and Do Not Increase Burdens for Survivors**

Fee waivers for ancillary forms such as work permits and waivers are important to ensure that all survivors have access to immigration protections for which they may be eligible.We at AGENCY are already seeing the deterrent impact on immigrant survivors of the changes; they are discouraged from accessing the protections they need to be safe and economically independent.[[24]](#footnote-24) [Give examples where applicable.] Contrary to what Congress intended, the proposed revisions will exacerbate the barriers that immigrant survivors already face when coming forward to access protection.

Means-tested benefits are often essential for supporting survivors' basic economic security.[[25]](#footnote-25) Contrary to USCIS' assertions,[[26]](#footnote-26) they are a simple, clear form of proof to document financial hardship and lack of available income to pay immigration fees. Eliminating this straightforward proof of financial hardship lacks practical utility,[[27]](#footnote-27) as receipt of a means-tested benefit is an accurate, valid and reliable method to demonstrate financial hardship.

[In our agency’s experience, the receipt of means-tested benefits indicates financial hardship that would make a survivor eligible for a fee waiver. Give examples where necessary.]

[If your agency only assists applicants under a certain percentage of the federal poverty guidelines, then explain your agency’s process which embeds a means-tested basis for provision your services].

USCIS indicates that “applicant who receives a means-tested benefit must generally provide evidence of income to the relevant agency. Therefore, applicants who receive a means tested benefit should have income documentation readily available to provide to USCIS.”[[28]](#footnote-28)

[Explain why this may not be inaccurate in your area. e.g. in your area does the granting agency accept multiple forms of evidence of income, and not solely tax transcripts? Explain, if applicable, why it would be harder for survivors to submit tax transcripts or other listed documentation, than would be necessary to obtain means-tested benefits in your area.]

USCIS appears to be willfully ignoring that receiving means-tested benefits demonstrates an individual’s financial need, the very reason that the fee waiver process was created. Forcing us and our clients to recreate the means-tested benefit criteria through other evidence is burdensome, duplicative and will discourage many clients from pursuing the relief Congress intended for them.

**Conclusion**

[Agency] urges OMB to (1) reject USCIS's proposed revisions to this information collection on fee waivers and (2) request that USCIS withdraw the proposed revisions. Instead, USCIS should expand the types of documentary evidence accepted for establishing eligibility for a fee waiver so that survivors may fully access these protections. Strong, safe families lead to stronger, safer communities. Further restricting access to these protections puts both at risk.

Respectfully submitted,

Name

Title

Agency

Contact Info

1. U.S. Citizenship and Immigration Services, Department of Homeland Security. “Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions” 84 FR 26137 (June 5, 2019), available at

   <https://www.federalregister.gov/documents/2019/06/05/2019-11744/agency-information-collection-activities-revision-of-a-currently-approved-collection-request-for-fee> (hereinafter “June 5 Announcement”) [↑](#footnote-ref-1)
2. DHS. USCIS. “Agency Information Collection Activities; Form I-912; Request for an Individual Fee Waiver,” USCIS-2010-0008 (September 28, 2018) available at: <https://www.regulations.gov/document?D=USCIS-2010-0008-0144> (hereinafter” September 2018 Announcement”) [↑](#footnote-ref-2)
3. DHS. USCIS. “Agency Information Collection Activities; Form I-912; Request for an Individual Fee Waiver,” USCIS-2010-0008, 84 FR 13687(April 5, 2019), available at: <https://www.federalregister.gov/documents/2019/04/05/2019-06657/agency-information-collection-activities-revision-of-a-currently-approved-collection-request-for-fee> (hereinafter “April 2019 Announcement”) [↑](#footnote-ref-3)
4. USCIS states that it will rescind the existing 2011 fee waiver policy memorandum and issue new guidance. The existing memorandum is 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 object to USCIS making such substantive policy changes via form revision. [↑](#footnote-ref-4)
5. These revisions to the fee waiver form were initially proposed in 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, 49121, available at <https://www.gpo.gov/fdsys/pkg/FR-2018-09-28/pdf/2018-21101.pdf> Proposed Revisions at [↑](#footnote-ref-5)
6. Comments submitted in response to DHS. USCIS, “Agency Information Collection Activities; Form I-912; Request for an Individual Fee Waiver,” USCIS-2010-0008, available at <https://www.regulations.gov/docketBrowser?rpp=25&po=75&dct=PS&D=USCIS-2010-0008&refD=USCIS-2010-0008-0144> [↑](#footnote-ref-6)
7. 5 CFR 1350.5(d)(1)(i) (indicating to obtain OMB approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that the proposed collection of information is the least burdensome necessary for the proper performance of the agency's functions to comply with legal requirements and achieve program objectives) [↑](#footnote-ref-7)
8. *Id.* [↑](#footnote-ref-8)
9. 5 CFR 1320.3 (defining “practical utility” as the actual, not merely the theoretical or potential, usefulness of information to or for an agency, taking into account its accuracy, validity, adequacy, and reliability, and the agency's ability to process the information it collects (or a person's ability to receive and process that which is disclosed, in the case of a third-party or public disclosure) in a useful and timely fashion.) *See also* 5 CFR 1350.5(d)(1)(iii) [↑](#footnote-ref-9)
10. September 2018 Announcement at 49121. April 2019 Announcement at 13687. [↑](#footnote-ref-10)
11. USCIS introduced this additional justification to “clarify the nature of the proposed policy changes” that it had not included in its prior two requests for public comment. June 5 Announcement at 26139. [↑](#footnote-ref-11)
12. *Id.* at 26138. [↑](#footnote-ref-12)
13. 8 CFR 103.7(c)(1)(i); Fee Waiver Guidelines at 2. [↑](#footnote-ref-13)
14. Center for American Progress. “How How Citizenship Helps the Economy”, available at <https://cdn.americanprogress.org/wp-content/uploads/2014/03/EconofCitizenship.pdf> [↑](#footnote-ref-14)
15. “USCIS acknowledges that as a result of the changes there are some applicants who would be able to receive free adjudication now who will not be able to after this policy change.” June 5 Announcement at 26139. [↑](#footnote-ref-15)
16. 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]. [↑](#footnote-ref-16)
17. “USCIS Responses to Public Comments on I-912 Revision 60-day Federal Register Notice” (April 5, 2019), available at <https://www.regulations.gov/document?D=USCIS-2010-0008-1243> (hereinafter “USCIS Response”) Response to comment 19 indicates, "USCIS understands that the VAWA, T and U population may have difficulty in obtaining the required documentation due to their alleged victimization and that those filers may need to apply a flexible standard in the types of documentation they may submit with their fee waiver request, " [↑](#footnote-ref-17)
18. *See* Instructions to Request Fee Waiver 3.25.2019, available at <https://www.regulations.gov/document?D=USCIS-2010-0008-1246> [↑](#footnote-ref-18)
19. *See* USCIS Response, Response to Comment 1. [↑](#footnote-ref-19)
20. See Note 10 *supra.*  [↑](#footnote-ref-20)
21. See USCIS Response, Response to Comment 9. [↑](#footnote-ref-21)
22. *Id.* [↑](#footnote-ref-22)
23. USCIS Response, Response to Comment 15. [↑](#footnote-ref-23)
24. *See e.g*. “2017 Advocate and Legal Service Survey Regarding Immigrant Survivors" The Asian Pacific Institute on Gender-Based Violence (APIGBV), ASISTA, Casa de Esperanza: National Latin@ Network, National Alliance to End Sexual Violence (NAESV), National Domestic Violence Hotline (NDVH), National Network to End Domestic Violence (NNEDV), and Tahirih Justice Center, [http: //www. tahirih. org/wp-content/uploads/2017/05/2017-Advocate-and-Legal-Service-SurveyKey-Findings.pdf](https://www.tahirih.org/wp-content/uploads/2017/05/2017-Advocate-and-Legal-Service-Survey-Key-Findings.pdf) [↑](#footnote-ref-24)
25. *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> [↑](#footnote-ref-25)
26. 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. Proposed Revisions at 49121. See also USCIS Response, Response to Comment 2. [↑](#footnote-ref-26)
27. *See* note 7 *supra.* 5 CFR 1320.3 (defining “practical utility” as means the actual, not merely the theoretical or potential, usefulness of information to or for an agency, taking into account its accuracy, validity, adequacy, and reliability, and the agency's ability to process the information it collects (or a person's ability to receive and process that which is disclosed, in the case of a third-party or public disclosure) in a useful and timely fashion.) *See also* 5 CFR 1350.5(d)(1)(iii) [↑](#footnote-ref-27)
28. USCIS Response, Response to Comment 7. [↑](#footnote-ref-28)