



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
Submitted via email to dhsdeskofficer@omb.eop.gov

Dear OMB USCIS Desk Officer:

On behalf of ASISTA, 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 This agency information collection was initially issued on September 28, 2018² and opened for comment a second time on April 5, 2019.³ All three announcements relate to revisions to the Form I-912; Request for Fee Waiver and include the rescission of an accompanying policy memorandum (hereinafter “proposed revisions”).⁴ We appreciate the opportunity to provide additional comments.

ASISTA is a national organization dedicated to safeguarding and advancing the rights of immigrant survivors of violence. For over 15 years, ASISTA has been a leader on policy advocacy to strengthen

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 5th Announcement”)

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”)

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”)

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”)

protections for immigrant survivors of violence. Our agency assists advocates and attorneys across the United States in their work on behalf of immigrant survivors, so that survivors may have greater access to protections they need to achieve safety and independence. Based upon this extensive expertise, we renew our opposition to these proposed revisions to the I-912 fee waiver application and instructions, including the rescission of the 2011 Fee Waiver Guidelines.⁵

We call on OMB to reject USCIS' proposed revisions to the fee waiver form and instructions as they will cause additional burdens for individuals applying for immigration benefits, including survivors of domestic violence, sexual assault and human trafficking.⁶ In consideration of this collection activity under the Paperwork Reduction Act (PRA)⁷, we urge OMB to reject the proposed revisions as USCIS' underlying justifications for them are deeply flawed. Furthermore, the proposed revisions will not only significantly increase the burden for individual applicants, but also for the service providers who assist them.

I. The Agency Has Not Properly Executed the Proposed Revisions

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."⁸ USCIS is proceeding in this process under the Paperwork Reduction Act (PRA) of 1995, as if the proposed revisions were simply a technical form change.⁹ This is not the case--the proposed revisions are a significant and substantive policy change disguised as form revision. Two central purposes of the PRA are:

- to reduce the burdens of individuals, small business, educational and nonprofit organizations...resulting from the collection of information by or for the Federal Government.¹⁰

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>

⁶ 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)

⁷ June 5th Announcement at 26138.

⁸ See September 2018 Announcement at 49121; See also June 5th Announcement at 26138.

⁹ See June 5th Announcement at 26138.

¹⁰ 44 USC 3501(1) (indicating one of the purposes of the PRA is to minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government)

- to *ensure the greatest possible public benefit* from and maximize the utility of information collected by or for the Federal Government.¹¹

These collections of information can be in various formats, including administrative forms and questionnaires.¹² The June 5th Announcement states that the I-912 “form instructions established application procedures, but did not change the substantive standard by which USCIS evaluated applications for immigrant benefit requests, just the *procedural steps* for such requests.”¹³ USCIS proposed revisions are not just about changes to a form or instructions, but go to the very core of an individual’s ability to apply for a fee waiver and ultimately the immigration benefits for which they are eligible. If applicants are unable to meet the stricter evidentiary requirements for a fee waiver contained in the proposed revisions, then they will not be able to access critical protections that can help them gain stability and thrive. For this reason, USCIS should present and evaluate the proposed revisions under the proper legal framework.

In the current notice, USCIS states applicants are “unlikely to have incurred costs or been harmed by relying on the 2011 Fee Waiver Guidelines.”¹⁴ In doing so, USCIS seems to have ignored the “harm” documented by the wide-spread opposition to the proposed revisions, which show the additional burden they would present to applicants and service providers. Instead, and contrary to the purpose of the PRA, USCIS is focusing on how this policy change would provide the “greatest possible” benefit to itself, not the public.

USCIS has not hosted any public engagement events for stakeholders around these proposed revisions and claims that its publication of three summary form change notices is sufficient. While USCIS’ has indicated that it is “in the process of responding to the comments received,” the agency has not provided any response to the comments collected in the April 2019 announcement.¹⁵ For this reason, we reiterate our positions why the proposed revisions will burden, not benefit, immigrant survivors of violence, and the service providers that assist them.

II. USCIS’ Justifications for the Proposed Revisions to Fee Waivers are Unsound

In the first two Federal Register notices issued on the proposed revisions, USCIS justified the elimination of the means-tested benefit criteria for fee waivers due to “the various income levels used in states to grant a means tested benefit result in inconsistent income levels being used to

¹¹ 44 USC 3501(2) [Emphasis added].

¹² 5 CFR 1320.3(c)

¹³ June 5th Announcement at 26139. [Emphasis added].

¹⁴ *Id.*

¹⁵ *Id.* While USCIS is “in the process of responding to the comments received” during the second announcement, no response has been given in the current notice.

determine eligibility for a fee waiver.”¹⁶ The June 5th Announcement reiterates this deeply-flawed rationale and now posits an additional justification that is as problematic as the first, stating that “without changes to fee waiver policy it will continue to forgo increasing amounts of revenue as more fees are waived.”¹⁷ This rationale is inconsistent with its prior justification and reflects the true goals of USCIS, which is to restrict access to immigration benefits for those facing economic hardship.

A. Fee Waivers Should Be Based Upon Applicants’ Ability to Pay Not USCIS’ Bottom Line

The purpose of fee waivers is to make immigration benefits accessible to those who demonstrate an economic need and an inability to pay.¹⁸ Fee waivers allow those who are most in need an opportunity to secure status and improve their lives. Access to secure immigration status can lead to higher wages for individuals and contribute to U.S. economic growth.¹⁹ For crime survivors specifically, access to immigration benefits is critical so that they can escape abuse and gain stability for themselves and their families. By limiting access to fee waivers, fewer people will have access to immigration relief for which they otherwise may be eligible. This can have a devastating impact on applicants and their families. For these reasons, the criteria for fee waivers should be based upon *an applicant’s* economic need, and not USCIS’ budgetary goals.

USCIS claims that DHS will be required to increase the fees that it charges for benefit requests for which fees are not waived.²⁰ Yet, USCIS has provided no supporting analysis or details about how the proposed revisions will impact the agency’s fee structure. What is clear from the June 5th Announcement is that USCIS anticipates that fewer individuals will be eligible for and receive fee waivers. The agency admits this several times in the June 5th Announcement, stating that they are aware that there may be applicants who would be in the past would be able to qualify for a fee waiver who now will not because of the policy change.²¹ Thus, the proposed revisions serve to reduce the use of fee waivers as a whole.

The addition of this new rationale in June 5th Announcement, the *third* notice on the proposed revisions to fee waivers, is in bad faith. By including *this* justification at *this* stage, USCIS has demonstrated a lack of transparency and clarity in the entire process of the information collection. USCIS’ proposed revisions seemingly have nothing to do with improving adjudication or consistency, but everything to do with improving USCIS bottom line at the expense of those most

¹⁶ See September 2018 Announcement at 49121; See also April 2019 Announcement at 13687.

¹⁷ June 5th Announcement at 26138.

¹⁸ 8 CFR 103.7(c)(1)(i); Fee Waiver Guidelines at 2.

¹⁹ The Center for American Progress. “How Citizenship Helps the Economy”, available at <https://cdn.americanprogress.org/wp-content/uploads/2014/03/EconofCitizenship.pdf>

²⁰ June 5th Announcement at 26138.

²¹ *Id.* at 26139.

vulnerable. USCIS' justification to limit access to fee waivers for those with an economic hardship in order to bolster its own coffers is harmful to survivors and unsupported by evidence.

B. Means-tested Benefits Are Sufficient Evidence to Demonstrate an Inability to Pay Immigration Filing Fees and Do Not Increase Burdens for 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.²² Survivors of intimate partner violence, sexual assault and human trafficking may 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 the time nor the ability to obtain additional documentation to support a fee waiver request.

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.

Contrary to USCIS' assertions,²³ receipt of means-tested public benefits is a simple, clear form of proof to document financial hardship and lack of available income to pay immigration fees. Eliminating this requirement lacks practical utility,²⁴ as receipt of a means-tested benefit is an accurate, valid and reliable method to demonstrate financial hardship.

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."²⁵ But as we mentioned in our previous

²² 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

²³ June 5th Announcement at 26139. See also "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"), See Response to Comment 2.

²⁴ 5 CFR 1320.3 (defining "practical utility" as meaning 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).

²⁵ June 5th Announcement at 26139.

comments, this is exactly how means-testing benefits *should* work.²⁶ 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 benefits. As we mentioned in our prior comment, a family of four living at 150% of the federal poverty guideline (\$38,625)²⁷ Parkersburg, West Virginia would need to earn 55,426 (nearly 43% more) to achieve the same standard of living in the San Francisco, California metropolitan area.²⁸ 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 an unambiguous criteria for determining fee waiver eligibility, and USCIS' rationale for excluding it is unjustified. 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. 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.²⁹

²⁶ 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." See also ASISTA Comment to USCIS-2010-0008, OMB Control Number 1615-0116; Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions, available at <https://asistahelp.org/wp-content/uploads/2018/12/ASISTA-Fee-Waiver-comment-FINAL-11.27.18.pdf> (hereinafter "ASISTA Comment")

²⁷ See Form I-912P Supplement, 2018 HHS Poverty Guidelines for Fee Waiver Requests, available at <https://www.uscis.gov/i-912p>

²⁸ Federal Reserve Bank of Saint Louis. "Cost of Living Calculator", available at <https://research.stlouisfed.org/publications/cost-of-living/calculator>

²⁹ 8 CFR 103.7(c)

III. The Proposed Revisions Will Cause Increased Burdens to Survivors and Service Providers

We acknowledge that USCIS has made important adjustments to the fee waiver form and instructions with regard to survivor-based relief, yet we still remain deeply concerned that USCIS is causing significant additional burdens for individuals applying for immigration benefits, including those applying for humanitarian protections.³⁰

Congress recognized that ensuring equal access to survivor-based immigrant 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, 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.³¹

Fee waivers have been and are 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.³²

A. Burden to Survivors

Though the applications for survivor-based relief themselves do not have a fee,³³ applicants must often file ancillary forms that do have significant fees.³⁴ We appreciate that USCIS has adjusted

³⁰ 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)

³¹ 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]

³² 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.govinfo.gov/content/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>

³³ 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>

³⁴ 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>

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 abuser or trafficker’s income in their fee waiver application.³⁵ Furthermore, we acknowledge the additional instruction that VAWA, T and U applicants and petitioners may provide “any available documentation,” such as affidavits or statements from religious organizations or advocacy groups with their Form I-912 to document income or lack thereof.³⁶ While these are steps in the right direction, USCIS must do more to address the barriers survivors will face accessing fee waivers under the proposed revisions.

1. Documentation Requirements

The I-912 instructions indicate 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.³⁷ Though survivors may not need to include income of an abuser, they may still need to obtain tax transcripts from other household members, including adult children or other family members which can be time-consuming and arduous process.

For example, to request a transcript online, the IRS requires an applicant to have an SSN and “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.”³⁸ Survivors and other applicants often do not possess or have access to this information. To apply for a transcript by mail, applicants need less information, but will need to wait an additional 5-10 days, which may impact critical filing deadlines.³⁹ Fee waiver applicants who may be in emergency or transitional housing, or do not have the language or technology access to obtain these transcripts will face additional burdens obtaining this information. USCIS seemingly does not take these considerations into account when it estimated the burden per response being 1.17 hours.⁴⁰

While we recognize that a 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 is more difficult to meet than the legal protections

³⁵ See Instructions to Request Fee Waiver 6.3.2019, p 5 and 7, available at <https://www.regulations.gov/document?D=USCIS-2010-0008-1251>

³⁶ See USCIS Response, Response to Comment 18 and 19. See Instructions to Request Fee Waiver 6.3.2019, p 6 and 8, available at <https://www.regulations.gov/document?D=USCIS-2010-0008-1251>

³⁷ See Instructions to Request Fee Waiver 6.3.2019, pp 5-7, available at <https://www.regulations.gov/document?D=USCIS-2010-0008-1251>

³⁸ Internal Revenue Service. “Tax Record: Transcript” available at <https://www.irs.gov/individuals/get-transcript>

³⁹ *Id.*

⁴⁰ June 5th Announcement at 26140.

Congress created for survivors like VAWA self-petitions, U visas and T visas.⁴¹ Indeed, Congress recognized that crime survivors should not be precluded from seeking status due to inability to pay fees or due to their inability to present primary evidence to prove their claim.⁴² The 2011 USCIS Fee Waiver Guidelines recognize the need for this documentary flexibility indicating that applicants may submit “any other documentation or evidence that demonstrates the individual’s inability to pay the fee based on his or her overall financial picture and household situation” in order to demonstrate financial hardship.⁴³ The Guidelines also indicates that “a fee waiver request may be approved *in the absence* of additional documentation if the applicant’s request is sufficiently detailed to substantiate his or her inability to pay.”⁴⁴ Thus, under current guidance, an affidavit or declaration under penalty of perjury should be sufficient to demonstrate eligibility for a fee waiver.

We appreciate that USCIS Response to Public Comment indicates that “adjudicators of these benefits and their fee waivers may consider whatever evidence is provided, and their Form I-912 filings will not be summarily rejected at intake when income information is not provided.”⁴⁵ And yet, we remain concerned that fee waiver denials on humanitarian benefit for survivors have increased significantly over the past year.⁴⁶ A year ago, USCIS began altering its fee waiver adjudication practice for survivors without notice, issuing sweeping denials of fee waivers for survivor-based applications. Hundreds of service providers expressed their concern about the impact they witnessed on survivors and their ability to provide services to them.⁴⁷ This significant rejection of fee waivers can cause survivors enormous hardship. Service providers report that survivors have had to borrow from others to pay fees or else missed critical deadlines because of fee waiver denials, which effectively denies them access to the appropriate legal process regarding their claim.

To ease this burden, USCIS should request additional documentation if it has any concerns about an applicant’s eligibility for a fee waiver, outlining what information it requires to determine whether an applicant has sufficiently documented the reasons for his or her inability to pay

⁴¹ See e.g. INA 204(a)(1)(J), INA 214(p)(4); See also USCIS Response. Response to Comment 19.

⁴² See ASISTA Comment note 26, *supra*.

⁴³ Fee Waiver Guidelines at 7.

⁴⁴ Fee Waiver Guidelines at 4 and 5. [Emphasis added].

⁴⁵ USCIS Response. Response to Comment 18.

⁴⁶ Jenna Krajewski. “The Hypocrisy of Trump’s Anti-Trafficking Argument for A Border Wall” The New Yorker February 5, 2019, available at: <https://www.newyorker.com/news/news-desk/the-hypocrisy-of-trumps-anti-trafficking-argument-for-a-border-wall>

⁴⁷ 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 now 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.

pursuant to 8 CFR 103.7(c). Applicants should be given a reasonable opportunity to submit additional information without losing critical filing deadlines. It is imperative, however, that the issuance of these requests not become a mechanism to undermine the rule that any credible evidence, including a signed declaration under penalty of perjury, should be sufficient to establish eligibility for a fee waiver.

2. USCIS Should Continue to Accept Applicant-Generated Fee Waivers

The requirement that applicants must submit an I-912 in lieu of a declaration and supporting evidence that outlines the factors in 8 CFR 103.7(c) creates additional burdens for survivors. Eliminating “applicant generated” fee waiver requests places an unnecessary burden 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 current 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, 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 have been used by survivors and their advocates for decades.

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).⁴⁸

3. USCIS should Continue the Practice of Having One Fee Waiver Application Per Family

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.

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.⁴⁹ However, for survivor-based forms of relief, the impact will be considerable. Survivors applying for humanitarian protections often include derivative family members in their applications. For example, the chart below shows the number of U and T visa applications filed last fiscal year:⁵⁰

⁴⁸ Fee Waiver Guidelines at 2.

⁴⁹ USCIS Response, Response to Comment 15.

⁵⁰ Sources: U.S. Citizenship and Immigration Services, *Number of I-918 Petitions for U Nonimmigrant Status (Victims of Certain Criminal Activities and Family Members) by Fiscal Year, Quarter, and Case Status 2009-2019* (Last accessed July 4, 2019) available at

Form of Relief	Principal Applications Filed (FY2018)	Derivative Applications Filed (FY 2018)	Total Applications Filed (FY 2018)
U Visa	34,967	24,024	58,991
T visa	1,613	1,315	2,928

This chart shows that survivors often submit applications for additional family members. Requiring a Form I-912 for each person filing a fee waiver request would also add significant burdens for survivors and service providers, who would need to spend extra time and resources filling out multiple eleven-page forms and taking time to navigate the complex documentary criteria. In addition, the proposed revisions would also increase the burden on USCIS adjudicators who would need to review thousands upon thousands of additional I-912s to assess fee waiver eligibility for a family unit. This requirement disproportionately impacts survivors and their families, as well as the specialized unit of adjudicators at the Vermont and Nebraska Service Centers who are charged with adjudicating survivor-based protections. We hardly consider this impact to be “minimal” and call on USCIS to continue its current policy of permitting one fee waiver for each family unit.

4. The Language on the Updated Form and Instructions Will Cause Additional Burdens for Survivors

a. I-912 Instructions

The Form I-912 Instructions lists nine different scenarios which may impact what type of documentation should be provided to demonstrate annual income.⁵¹ Number 8 provides, *inter alia*,

If you already have or are applying for VAWA benefits or T or U nonimmigrant status, and due to your victimization, you do not have any income or cannot provide proof of income

https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I918u_visastatistics_fy2019_qtr2.pdf ; See also U.S. Citizenship and Immigration Service, Form I-914, Application for T Nonimmigrant Status by Fiscal Year, Quarter, and Case Status (Fiscal Year 2019, 1st Quarter, Oct. 1- Dec. 31, 2018) (last accessed July 4, 2019) available at: https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I914t_visastatistics_fy2019_qtr2.pdf

⁵¹ See Instructions to Request Fee Waiver 6.3.2019, p 6, available at <https://www.regulations.gov/document?D=USCIS-2010-0008-1251>

as required in the paragraph above, describe your situation in sufficient detail in Part 3., Item Number 12. to substantiate your inability to pay as well as your inability to obtain the required documentation.

This language is burdensome on survivors, as they may face obstacles obtaining income or providing proof of income for reasons that may or may not be related to their victimization. Abusers commonly prevent survivors from accessing or acquiring financial resources in order to maintain power and control in the relationship.⁵² In one study, 99% of domestic violence victims reported experiencing economic abuse.⁵³ 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.⁵⁴ However, it is essential to consider survivors' lives and circumstances from a fuller view. Experts also show that a survivor's financial risks and considerations may not be related to an abusive partner's behavior.⁵⁵ For example, survivors may be laid off because of downsizing or shifts in the economy.⁵⁶ While this financial hardship is not abuser-generated, the loss of income and other benefits can profoundly impact a survivor's options.⁵⁷

The phrase "due to your victimization" should be eliminated in this instruction as survivors should not have to demonstrate a nexus to victimization in order demonstrate why they do not have income or proof of income. This *ultra vires* language places additional unnecessary burdens on survivors and can cause needless trauma and hardship for survivors. Further, this language runs counter to existing law as Congress did not place any conditions on the availability of fee waivers for survivors when it codified the use of fee waivers for filing a VAWA self-petition, a T or U visa application, or an application for VAWA cancellation or suspension of deportation.⁵⁸

⁵² 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

⁵³ 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>

⁵⁴ Mary Kay."2012 Truth About Abuse Survey Report" available at. http://content2.marykayintouch.com/public/PWS_US/PDFs/company/2012Survey.pdf

⁵⁵ Jill Davies and Eleanor Lyon. "Domestic Violence Advocacy: Complex Lives/Difficult Choices Second Edition." SAGE (2014) p. 42.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ See note 31 *supra*.

b. I-912 Form

The updated I-912 Form contains provisions that are difficult to comprehend and will cause confusion and burden for survivors filling out the application. For example, Part 3, Questions 6 and 7 on page 3 provide no checkbox for “other” or “unknown” as there may be applicants who are uncertain or unaware of whether a household member filed a tax return, and who may have an explanation that goes beyond the scope of the options provided in the form.

B. Burden to Service Providers

The proposed revisions represent a significant departure from prior fee waiver practice, and so it will greatly increase the time, effort and financial resources to comply with the new fee waiver requirements. USCIS Response to Public Comment dismissively contends the additional burden for service providers would be “minimal” and that DHS has determined that the benefits of the proposed revisions excited the potential “small” burden increase.⁵⁹

We contest USCIS' suggestion that the burden to service providers would be insignificant. ASISTA currently provides technical assistance to hundreds of attorneys and advocates nationwide who provide assistance to survivors seeking survivor-based forms of immigration relief, many of whom are at non-profit agencies with limited resources. Should the fee waiver revisions become finalized, ASISTA will face the additional burdens of having to update our advisories, training curriculum and resources in order to share accurate information about the proposed revisions with our extensive networks. In addition, ASISTA attorneys will spend our limited resources providing additional individual technical assistance on fee waiver changes to attorneys and advocates serving survivors.

Many of the attorneys and advocates with whom we work submit fee waiver requests based on the straightforward criteria of providing receipt of means-tested benefits. Service providers would need to be trained on the new form and policy guidance, as well as IRS forms and processes. In addition, they will have to spend additional time and resources obtaining documentation to support a fee waiver request.

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

USCIS indicated in its Response to Public Comment that it “is committed to protecting the safety of victims of domestic violence, trafficking, and other crimes by adhering to its obligations under 8 U.S.C. 1367.”⁶⁰ Yet, the agency has deemed it unnecessary to reference these requirements specifically on the I-912 Form or instructions and will not include specific reference to the

⁵⁹ USCIS Response, Response to Comment 7.

⁶⁰ USCIS Response. Response to Comment 20.

confidentiality protections in every form.⁶¹ We find USCIS' position to be dismissive of our concern.

We raised this issue in our previous comments,⁶² and did in no way suggest that the protections of 8 USC 1367 be referenced *in every form*, as there are many forms and applications in which these protections are not germane. Yet the updated I-912 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 as a VAWA self-petitioner. 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 1367.⁶³

In any instances in which applicants will be sharing information related to their status as a victim, then USCIS has a duty to indicate that this information will be protected under the law. OIRA is tasked with reviewing “the extent to which the information collection is consistent with applicable laws, regulations, and policies related to privacy, *confidentiality*, security, information quality, and statistical standards.”⁶⁴ We urge OMB to instruct USCIS that it must make clear in the I-912 form and instructions that the protections at 8 USC 1367 apply. We fail to see how including this information would be a burden to USCIS.

Conclusion

OMB guidance indicates that “a central goal of OMB review is to help agencies strike a balance between collecting information necessary to fulfill their statutory missions and guarding against unnecessary or duplicative information that imposes unjustified costs on the American public.”⁶⁵ For the reasons mentioned above, we hold that the proposed revisions will impose an unjustified cost to immigrants eligible for benefits to help them gain stability and thrive. They will impose an unjustified cost to survivors who seek critical pathway for to obtain justice and safety, as well as for those service providers who assist them.

⁶¹ *Id.*

⁶² See e.g. ASISTA Comment to USCIS-2010-0008, note 26 *supra*.

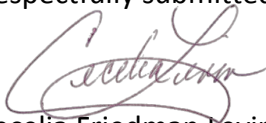
⁶³ See USCIS Policy Manual-Chapter 5 Privacy and Confidentiality in Customer Service, available at <https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume1-PartA-Chapter5.html>

⁶⁴ Information Collection under the Paperwork Reduction Act (April 7, 2010), a Memorandum for the Heads of Executive Departments and Agencies, and Independent Regulatory Agencies from Cass R. Sunstein, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget at 5, available at https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/inforeg/PRAPrimer_04072010.pdf

⁶⁵ *Id.*

We urge OMB to reject USCIS' proposed revisions to this information collection on fee waivers and request that USCIS withdraw the proposed revisions as they present considerable burdens to survivors of crime and the service providers who assist them. Instead, USCIS should seek 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,

A handwritten signature in dark ink, appearing to read 'Cecelia Friedman Levin', written in a cursive style.

Cecelia Friedman Levin
Senior Policy Counsel
ASISTA