USCIS’ Proposed Revisions to Fee Waivers

ASISTA Template Comment

**Content Instructions**

We provide some suggestions below, but we suggest *you individualize your comments with your own reasons and experiences*. How will the proposed revisions harm the immigrant survivors and families with whom you work? To the extent possible, your comment submission should be *in your own words and based upon your agency’s concerns and interests.*

Edit and use as you wish the citations to quotations, studies and statistics provided below.

Red font in the template = insert information about your agency and your clients; put in your own version of the statement. Please make sure to change all the red fonts back to regular font size and color.

For another template in addition to the DV/SA survivor specific template below, see the Immigrant Legal Resource Center’s comment[**here**](https://www.ilrc.org/fee-waiver-public-comment-template), addressing a wide range of concerns with the fee waiver memo and updated forms. The Naturalization Working Group has also created a comment, available [**here**](https://docs.google.com/document/d/10iYzc3SZq7txpefF49qwXG-DO-zWOSe6cAAuHq6Z33c/edit?usp=sharing)**.** Thanks to ILRC and the Working Group for putting these amazing resources together and their generosity in sharing them. Feel free to adjust your comment to incorporate any of these additional issues.

**Deadline and How to File**

Deadline for submission is **November 27, 2018.**

Comments can be submitted online at: <https://www.regulations.gov/comment?D=USCIS-2010-0008-0144>

Please review and clear any formatting before submission.

If you have any problems, please contact us at questions@asistahelp.org

**DV/SA survivor TEMPLATE COMMENT on fee waiver changes**

DATE

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]*](https://www.regulations.gov/comment?D=USCIS-2010-0008-0144)

Dear Ms. Deshommes:

On behalf of agency, I am submitting this response 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]](#footnote-0) These proposed revisions relate to Form I-912; Request for Fee Waiver and accompanying memoranda.[[2]](#footnote-1)

Our organization/agency/firm works directly with immigrant survivors of domestic and sexual violence and those affected by human trafficking and/or children who have suffered abuse, abandonment or neglect. [Describe in one or two sentences your agency’s experience working with these survivors either directly or through systems advocacy].

Given our mission and our work, we stridently oppose these proposed revisions to the I-912 fee waiver application and instructions as well any corresponding changes to the USCIS Policy Memorandum, PM-602-0011.1.[[3]](#footnote-2) We call on USCIS to withdraw the proposed revisions to the fee waiver form and USCIS memoranda and instead, to develop policies and procedures that ensure that immigrant survivors of violence have equal access to critical, life saving protections.

The proposed revisions directly conflict with the clear will of Congress that survivors not be precluded from seeking status due to inability to pay fees.[[4]](#footnote-3) Moreover, the abrupt change in fee waiver policy violates the special "any credible evidence" standard Congress mandated, in express recognition that survivors of domestic and sexual violence, in particular, often do not control "primary" forms of evidence.[[5]](#footnote-4) Furthermore, the proposed revisions will cause significant additional burdens for immigrant survivors of domestic violence, sexual assault and human trafficking, as well as for the service providers that assist them.

1. **USCIS Proposed Revisions Undermine the Violence Against Women Act and the Trafficking Victims Protection Act.**

The survivors we help 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 do not have resources to pay for fee-based ancillary forms nor have "primary documentation" (tax transcripts, Verification of Non-Filing) to demonstrate their economic need. [Insert examples]

This is why we are thankful that Congress recognized this barrier when it created the special "any credible evidence" standard for these forms of relief.[[6]](#footnote-5) USCIS has acknowledged and explained how and when they must apply this standard for survivor-based protections like VAWA self-petitions and U and T visa applications.[[7]](#footnote-6)

This standard is in line with Congress’s intent to ease the evidentiary challenges that immigrant survivors often face. In VAWA self-petitions, for example, the former Immigration and Nationality Service 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.”[[8]](#footnote-7)

USCIS must not impose a higher evidentiary standard on fee waivers than it would on the merits underlying petitions. To do so would will create unnecessary barriers for many of the domestic and sexual assault survivors we serve.

For example, the proposed revisions regarding additional documentation like tax transcripts or a verification of non-filing from the IRS to demonstrate an applicant’s income is under 150% of the poverty guidelines is overly burdensome for survivors.

[Add in examples or additional details why requiring I-912 and the additional documentary burdens like obtaining federal tax transcripts for proof of income or verification of non-filings would be hard for your clients and their families]

Instead of requiring evidence that may increase burdens for survivors, USCIS should maintain flexible standards that recognize the dynamics of intimate partner violence and economic hardship and to conform to existing authority.

**B. The proposed revisions will cause hardship for immigrant survivors of violence and service providers that support them.**

Fee waivers for ancillary-forms like work permits and waivers are important to ensure that all survivors have access to immigration protections for which they may be eligible.[[9]](#footnote-8) We at AGENCY are already seeing that immigrant survivors are feeling discouraged from accessing protections that they need to be safe and economically independent.[[10]](#footnote-9) [Give examples where applicable.] Contrary to what Congress intended,.[[11]](#footnote-10) the proposed revisions will exacerbate the barriers that immigrant survivors already face when coming forward to access protection. The proposed revisions ignore the reality of the intersections of financial instability and intimate partner violence, they increase barriers for survivors and service providers, and unnecessarily eliminate means tested-benefits as criteria for fee waivers.

1. *Flexible Fee Waiver Policies and Practices are Critical for Survivors of Violence .*

In our experience, intimate partner violence, especially for immigrants, comports with studies cited by the Department of Justice[[12]](#footnote-11) and developed by the Center for Disease Control (CDC),[[13]](#footnote-12) that indicate the strong relationship between intimate partner violence and economic, food, and housing insecurity. Abusers commonly prevent survivors from accessing or acquiring financial resources in order to maintain power and control in the relationship. In one study, 99% of domestic violence victims reported experiencing economic abuse.[[14]](#footnote-13)

[Give examples of what this looks like in the cases that your agency serves]

[Additional domestic violence statistics can be found at the National Domestic Violence Hotline website [here](https://www.thehotline.org/resources/statistics/) and the CDC has state-by-state data available [here](https://www.cdc.gov/violenceprevention/pdf/NISVS-StateReportBook.pdf)]

For these reasons, flexible fee waiver guidance and practice have been and are absolutely essential for immigrant survivors to access critical protections created by VAWA and the TVPA.

*2. The Proposed Revision Will Create Burdens for Service Providers Assisting Survivors.*

For over 20 years, USCIS has employed a flexible standard for survivor fee waivers to ensure they did not deter or deny eligible survivor applications. The stringent requirements that each family member will need their own I-912 fee waiver and the limitations on documents to show income will cause unnecessary delay and burden for survivors and further drain the limited time, capacity and resources of service providers who assist them.

[Please provide additional details of how changes will impact your agency and increase your workload, especially for non-profit agencies, including what additional barriers this would cause (e.g. if the increased work means you would serve fewer individuals, and that how that would impact survivors as a whole]

[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]

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

Means-tested benefits are often essential for supporting survivors' basic economic security.[[15]](#footnote-14) Contrary to USCIS' assertions,[[16]](#footnote-15) they are a simple, clear form of proof to document financial hardship and that an applicant does not have disposable income to pay immigration fees. 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 indicate your agency’s process and that you already apply a means-tested rationale for provision of services].

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 and will discourage many clients from pursuing the relief Congress intended for them.

**Conclusion**

Ensuring equal access to the protections Congress created is crucial, especially for domestic and sexual violence survivors who may have few financial resources of their own. USCIS should not bypass Congressional intent and undermine these laws through fee waiver policy changes. Fee waivers provide an essential pathway for survivors to seek justice and safety.

AGENCY urges USCIS to withdraw the proposed revisions and to, instead, expand the types of documentary evidence accepted for establishing eligibility for a fee waiver so that survivors of domestic violence, sexual assault and human trafficking may equally 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 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> [↑](#footnote-ref-0)
2. USCIS is proposing revisions to existing fee waiver memo 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-1)
3. Proposed Revisions at 49121. [↑](#footnote-ref-2)
4. For this reason, Congress codified the use of fee waivers in humanitarian cases in the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, specifically stating that DHS ***shall*** permit applicants to apply for a waiver of any fees associated with filing a VAWA self-petition, a T or U visa application, or an application for VAWA cancellation or suspension of deportation. William Wilberforce Trafficking Victims Protection Reauthorization Act. Section by section 201(d)(7), Public Law No: 110-457 (December 23, 2008), available at: <https://www.congress.gov/110/plaws/publ457/PLAW-110publ457.pdf>. [Emphasis added] [↑](#footnote-ref-3)
5. *See* Section A, *infra.*  [↑](#footnote-ref-4)
6. *See* e.g. INA 204(a)(1)(J), INA 214(p)(4) [↑](#footnote-ref-5)
7. 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 204.2(c)(2)(i); 8 CFR 214.14(c)(4); 8 CFR 214.11(d)(2)(ii) and (3).](http://bit.ly/INSCredibleEvidenceMemo) [↑](#footnote-ref-6)
8. 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> [↑](#footnote-ref-7)
9. See footnote 4, *supra.* [↑](#footnote-ref-8)
10. *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-9)
11. *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.”) [↑](#footnote-ref-10)
12. NCVC and DOJ Office of Crime Victims. “Intimate Partner Violence” Available at <https://ovc.ncjrs.gov/ncvrw2018/info_flyers/fact_sheets/2018NCVRW_IPV_508_QC.pdf> (indicating ““Households earning between $15,000 and $24,999 reported slightly more intimate partner victimizations in 2015 than other households. However, intimate partner violence is not isolated to any particular income bracket.”) [↑](#footnote-ref-11)
13. 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> [↑](#footnote-ref-12)
14. 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> [↑](#footnote-ref-13)
15. 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-14)
16. 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. [↑](#footnote-ref-15)