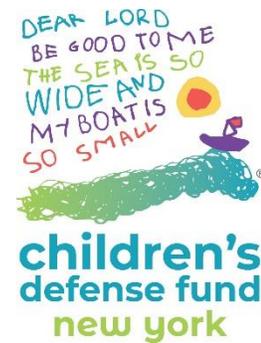


July 5, 2019

Submitted via email

OMB USCIS Desk Officer  
[dhsdeskofficer@omb.eop.gov](mailto:dhsdeskofficer@omb.eop.gov)



**Re: Agency USCIS, OMB Control Number 1615-0116** - Public Comment Opposing Changes to Fee Waiver Eligibility Criteria, Agency Information Collection Activities: Revision of a Currently Approved Collection: Request for Fee Waiver FR Doc. 2019-11744, Filed 6-5-19; 84 FR 26137

Dear Desk Officer:

On behalf of The Children's Defense Fund – New York (CDF – NY), we write to offer comments in opposition to the Department of Homeland Security (DHS), United States Citizenship and Immigration Services (USCIS) proposed changes to fee waiver eligibility criteria, OMB Control Number 1615-0116, published in the Federal Register on June 5, 2019.

CDF-NY submit comments on behalf of children in the United States, especially young children, children with disabilities, children of color, low-income children, immigrant children, and children in complex families. For 46 years, CDF has been advocating for children and seeking strong support for families through the passage of laws and implementation of rules, programs, and services in their best interest. CDF's Leave No Child Behind® mission is to ensure every child a *Healthy Start*, a *Head Start*, a *Fair Start*, a *Safe Start*, and a *Moral Start* in life and a successful passage to adulthood with the help of caring families and communities.

In New York, CDF-NY has a unique approach to improving conditions for children, combining research, public education, policy development, community organizing and advocacy. A recognized authority in the endeavor to protect children and strengthen families, CDF-NY serves as a resource and partner for children, families and organizations throughout New York City and State.

CDF-NY has worked with countless young people since its establishment, whether they were citizens, immigrants, or children of immigrants. Many of the youth have shared stories about their use of public benefits, and the support that public assistance programs have provided in their lives. Many of our young people have gone on to beat the odds against them and become American success stories. Who is to say whether these immigrants and their children won't go on to be the next great entrepreneur, scientist, or the next president?

CDF-NY is alarmed by the proposed policy because if promulgated, it will only make it more difficult for qualified people to obtain immigration status, therefore further barring low income families, immigrants, and children of immigrant families from receiving immigration benefits and subsidies. Furthermore, the proposed change will generate additional burdens on individuals, their families, as well as the legal service providers who represent them. It is why we condemn the proposed change and request that the Department of Homeland Security (DHS) and the United States Citizenship and Immigration Services (USCIS) to immediately withdraw the proposed policy and maintain the current criteria for assessing fee waivers to ensure equal and just access to immigration benefits and subsidies for all eligible applicants.

**I. The proposed change would shift the cost of immigration services to those least able to afford them.**

To demonstrate current eligibility criteria for a fee waiver, an applicant can show: 1) Receipt of a means-tested benefit, 2) Income below 150% of the federal poverty guidelines, or 3) demonstrate financial hardship. The first two standards serve as bright-line tests for applicants to qualify for a fee waiver, whereas the last criteria is a discretionary decision made by the adjudicator and requires more documentation and time in putting together an application.

On June 5<sup>th</sup>, 2019, USCIS published an amendment on the Federal Register removing receipt of a means-tested benefit as one of the qualifications for a fee waiver. By only accepting fee waiver requests based on income at or below 150% of the poverty income guidelines, or for financial hardship, USCIS would drastically reduce the total population eligible for a fee waiver and effectively deny the ability of large numbers of applicants to qualify. This would be devastating to low-income individuals, who will have a harder time meeting the stricter evidentiary requirement proposed to prove eligibility; immigrants, who would otherwise be unable to move forward on their path to U.S. Citizenship or obtain valid unexpired proof of their legal status in the U.S, and also, their children and families, who would be less likely to receive the benefits and scholarships that come with full participation as legal residents of the United States.

Moreover, fee waivers are particularly critical for survivors of serious crimes to obtain relief. This policy change will harm survivors of domestic violence, sexual assault, human trafficking, and other serious crimes, who often need fee waivers to secure the vital immigration protections Congress created in the Violence Against Women Act (VAWA) and Trafficking Victims Protection Act (TVPA). Fleeing from abusive situations, survivors often do not have resources to pay for fee-based ancillary forms nor have primary documentation (e.g., tax transcripts, bank account statements, etc.) to demonstrate their economic need. Abusers commonly prevent survivors from accessing or acquiring financial resources in order to maintain

power and control in the relationship. For the children of survivors of serious crimes, this is a denial of access to the immigration system because of situations outside of their control.

This change will also impact and further limit access to naturalization for otherwise eligible lawful permanent residents. The naturalization fee has gone up 600% over the last 20 years, pricing many qualified green card holders out of U.S. citizenship. USCIS asserts, without any evidence to back up its claim, that individuals can merely “save funds” and apply later if they do not have the funds to apply today. This both fails to consider the harm to individuals resulting from the delay in applying and unjustifiably assumes individuals applying for fee waivers have disposable income that could be set aside. Once again, this could potentially harm children within these families who will lose access to benefits and scholarships and other opportunities available to their citizen peers simply because of this change.

USCIS claims that the agency is trying to make the process more consistent and efficient yet proposes a change that is counterproductive and has nothing to do with consistency. The negligence of research and impact it will have on the population above clarifies USCIS’ primary motivation: to improve USCIS’ revenue and to deny access to immigration benefits and naturalization for vulnerable populations. The fee waiver exists to ensure that all eligible applicants have access to immigration benefits and naturalization, even if they are unable to pay the application fee. It is improper and circular logic to eliminate fee waivers to justify agency revenue from individuals who are unable to afford the fees. The agency should look for any opportunity to mitigate the costs associated with filing and design them to ease, rather than exacerbate, these obstacles.

Approximately 18 million children in the U.S. live in a family with at least one immigrant parent,<sup>1</sup> and an estimated 5 million children (of whom more than 80 percent are U.S. citizens) live in homes with at least one undocumented parent.<sup>2</sup> In New York, there are approximately 1.5 million children in immigrant families.<sup>3</sup> These children and families are seeking the best paths to normalize their situations and participate and contribute to society in the fullest way possible. This rule create more barriers for all these children and families to completely live the American dream and succeed in life so that they can give back to this adopted country of theirs.

## **II. The changes would impose administrative and cost burdens on federal and state government agencies.**

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<sup>1</sup> *Databank Indicator: Immigrant Children*, CHILD TRENDS (Oct. 2014), [www.childtrends.org/?indicators=immigrant-children](http://www.childtrends.org/?indicators=immigrant-children).

<sup>2</sup> Randy Capps, Michael Fix, and Jie Zong, A profile of U.S. Children with Unauthorized Immigrant Parents (Washington, DC: Migration Policy Institute, 2016), [www.migrationpolicy.org/research/profile-us-children-unauthorized-immigrant-parents](http://www.migrationpolicy.org/research/profile-us-children-unauthorized-immigrant-parents).

<sup>3</sup> Migration Policy Institute (MPI) tabulation of data from U.S. Census Bureau, 2017 American Community Survey (ACS) and 1990 Decennial Census; 1990 data were accessed from Steven Ruggles, J. Trent Alexander, Katie Genadek, Ronald Goeken, Matthew B. Schroeder, and Matthew Sobek, Integrated Public Use Microdata Series: Version 5.0 [Machine-readable database] (Minneapolis: University of Minnesota, 2010).

USCIS claims that the proposal will standardize, streamline, and speed up requesting a fee waiver by clearly laying out the most salient data and evidence necessary to make the decision. Instead, these proposed changes will slow down an already overburdened system, delaying and denying access to immigration benefits or naturalization for otherwise eligible immigrants. USCIS adjudicators will be forced to engage in a time-consuming analysis of voluminous financial records, rather than relying on the professional expertise of social services agencies who determine eligibility for means-tested benefits.

Under the proposed changes, the applicant must procure additional new documents including a federal tax transcript from the Internal Revenue Service (IRS) to demonstrate household income less than or equal to 150% of the federal poverty guidelines. Currently, applicants can submit a copy of their most recent federal tax returns to meet this requirement. The government does not provide any reason why a transcript is preferred over a copy of an individual's federal tax return. Federal tax returns are uniform documents and most individuals keep copies on hand. The proposed requirement will place an additional burden on individuals for more documents and does not account for those individuals who might need assistance obtaining a transcript due to lack of access to a computer or for delays involving delivery of mail.

The proposal also reduces efficiency and makes the application process more complex, where the agency cannot justify the change as a procedural improvement. When trying to show financial hardship, applicants often need to document many factors, including sources of income as well as extraordinary expenses related to illness, natural disaster, or other special circumstances. The proposed rule would therefore add to a layer of bureaucratic expense and delay at the agency — officials will now be tasked with collecting income information, such as pay stubs, assets, and other information *in every case* to make a determination, provide for administrative appeals, and engage in other tasks that are streamlined under the current structure. According to research the government estimates that the total number of responses for Form I-912 is approximately 350,000. With nearly 6 million pending cases as of March 31, 2018, DHS has conceded that USCIS lacks the resources to timely process its existing workload. These operational demands would be levied upon an agency that already suffers profound capacity shortfalls. USCIS can ill afford to further delay its operations, where backlogs of pending applications and wait times for adjudication have increased between FY2016 and FY2019 for the agency. The additional delay and expense that would be caused by the rule is unnecessary and counterproductive. Instead of requiring less evidence from applicants, as its *Federal Register* announcement suggests, USCIS forces individuals to collect, and adjudicators to analyze, more voluminous records.

Moreover, the proposed change would burden government agencies other than USCIS. Many applicants who receive means-tested public benefits are not required to file tax returns.

These people would now have to file needless returns or request certification of non-liability for taxes from the IRS, as the most likely first step toward demonstrating income below the poverty guidelines and/or financial hardship. This proposal places an unnecessary burden on the IRS and fails to address whether the IRS is prepared to handle a sudden increase in requests for documents. Under the proposed rule, almost every person who applies for a fee waiver based on their annual income must also request IRS documentation proving their eligibility. In addition to these documents, all changes in employment, or non-employment, inability to work, or need to file will require an IRS verification. An unclear number of applicants will have to return to the IRS for certified copies of their transcripts. This will increase the production and duplication of documents for information that can be proven by evidence the applicant already has (their federal tax returns or pay stubs), in a different manner (affidavits from service organizations), or through a different agency (verification of receipt of a means-tested benefit).

USCIS will waste resources in duplicative efforts if it adopts the proposal. Receipt of a means-tested benefit is the only current method for establishing eligibility that involves a yes-or-no determination that administrators can reach by reviewing a single document. No one piece of evidence—not even a tax return or certification of non-liability for taxes—will always show how an individual's income compares to federal poverty guidelines, nor the extent to which an individual is experiencing current financial hardship.

The federal government has long entrusted its state and local counterparts with adjudicating eligibility for federally-funded benefits programs. States have made no alterations in their procedures for awarding means-tested benefits that would justify ending USCIS reliance on this factor. Therefore, there is no reason for the agency to amend and depart from our well-functioning system of local, state, and federal cooperation in assessing need and qualification for assistance.

## **Conclusion**

The current notice, like the previous two notices, vastly underestimates the burden that this change will cause to applicants and the legal service providers who represent them. Eligible individuals will be foreclosed from applying for an immigration benefit. Naturalization applicants are the largest group of persons applying for these fee waivers, and the notice makes no acknowledgment of the impact this will have on persons seeking citizenship.

USCIS now provides a contradictory rationale that purports to improve adjudication consistency but simultaneously disqualify as many people as possible to raise more revenue. No reasonable basis is provided for such contradictory goals, and no thorough research of the impact of fee waivers and increases in USCIS fees is presented.

USCIS should review the development of the current fee waiver standards and engage in a reasoned analysis of how it arrived at its current proposal. Nothing in the current notice

indicates an understanding of how and why the current form and guidance were created in 2010, which is critical to planning any changes. The Form I-912 request for fee waiver with its three-step eligibility formula, and the 2011 guidance, were specifically created to simplify the fee waiver adjudication process. The eligibility for receipt of a means-tested benefit was the linchpin of that simplified process.

We urge USCIS, rather than implement the revision, to perform public outreach to include public meetings, teleconferences, and in-person meetings with immigrant organizations concerned with this issue to gather information, and then engage in full notice and comment procedures on all substantive changes proposed in order to ensure the fair and efficient adjudication of immigration benefits and naturalization.

Sincerely,

The Children's Defense Fund – New York