



FEE WAIVERS: STATUS OF PROPOSED CHANGES

By Allison Davenport

Recent attacks on the current fee waiver system threaten the access of low-income individuals to immigration benefits they are otherwise eligible to receive. On October 24, 2019, the Department of Homeland Security (DHS) announced a dramatic change to the fee waiver process, most notably by eliminating receipt of means-tested benefits as a possible basis for a fee waiver and requiring certain types of evidence in order to qualify for a fee waiver.¹ As a result of a legal challenge, this change was subsequently halted by a federal judge while the lawsuit is pending.² On November 14, 2019, a proposed Fee Rule change was published in the Federal Register.³ That proposal would raise filing fees substantially and eliminate fee waivers altogether for most types of applications. The public comment period is open until December 30, 2019 with a final rule expected sometime in 2020.

This practice alert provides a brief overview of the main changes outlined in these two proposals as well as some practice tips for how to fight these harmful changes and best support low-income clients.

I. Background on Fee Waiver Requests

Fee waivers are available for many—but not all—immigration applications and processes,⁴ and are an important tool for facilitating access to immigration benefits that might otherwise be out of reach for many people, for no other reason than their lack of financial resources.⁵

¹ USCIS, News Release, “USCIS Updates Fee Waiver Requirements,” (October 25, 2019), <https://www.uscis.gov/news/news-releases/uscis-updates-fee-waiver-requirements>.

² Materials related to the injunction and the underlying court case can be found here: <https://protectdemocracy.org/project/city-of-seattle-v-dhs/>.

³ U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. 220 (November 14, 2019). Available at: <https://www.federalregister.gov/documents/2019/11/14/2019-24366/us-citizenship-and-immigration-services-fee-schedule-and-changes-to-certain-other-immigration>.

⁴ Fee waiver requests are available for all naturalization applications, all green card renewals, all employment authorization applications—initial or renewal—except for those for Deferred Action for Childhood Arrivals (DACA) cases, and all biometrics fees (with the exception of the biometrics fee associated with the provisional waiver process). In addition, fee waiver requests are accepted in association with adjustment and waiver applications, but only for certain immigrants including U and T nonimmigrants, VAWA self-petitioners, TPS grantees, special immigrant juveniles, asylees, and others exempt from public charge inadmissibility. Thus, a large group of applicants—anyone applying for permanent residency through a family member or employer petition—is ineligible for a fee waiver, but fee waivers still are critical for many applicants for immigration benefits. See 8 CFR § 103.7(c)(3) and USCIS Adjudicator’s Field Manual (AFM), Chapter 10.9, for a detailed list of applications for which a fee waiver may be available. Despite the fact that fee waivers are not available for all applications or all applicants, they are, however, an essential access tool: more than half a million fee waiver requests are filed each year.

⁵ Immigration application filing fees can range from a few hundred dollars to over a thousand dollars. See USCIS Fee Schedule, available at <https://www.uscis.gov/g-1055>.

NOTE: Fee waivers are different from fee exemptions. Certain applications are fee exempt, meaning there is no fee to apply. These types of applications do not require a fee waiver request since there is no fee to waive. Some forms of relief are a hybrid of the two. For example, when someone applies for a U visa, the U visa application is fee exempt. However, the other applications that might be submitted along with that application, such as an application for a waiver or an employment authorization document, would require either the payment of the requisite fee or a fee waiver request.

According to the regulations, fee waivers are available for certain applications at DHS' discretion, as long as the fee waiver request is not inconsistent with the underlying benefit. For example, requesting a fee waiver for an application for permanent residence based on a family petition would be inconsistent since such an applicant is subject to the public charge ground of inadmissibility at INA § 212(a)(4).⁶ When a fee waiver is available for an application, the legal standard in the regulation is that the applicant must establish they are “unable to pay the prescribed fee.”⁷

II. Summary of Fee Waiver Form Changes Currently on Hold

Despite concerns raised by immigration, health, and other advocates about the detrimental effects of such changes on working class people, low-wage workers, and vulnerable groups during three rounds of public comments, on October 24, 2019 DHS proceeded with revising Form I-912 and significantly altering the fee waiver criteria and requirements. It is important to note that these changes took effect December 2, 2019 but were then halted by a federal court order on December 9, 2019. As a result, USCIS has rescinded the revised Form I-912 and is currently adjudicating all fee waiver requests under the prior criteria.⁸ Therefore, the changes described below are not in effect at this time.

Litigation: Three lawsuits challenging the changes to the fee waiver form were filed in federal court in fall 2019. In *City of Seattle v. DHS*, a federal judge issued a nationwide injunction putting the fee waiver form changes on hold and reverting to the prior form and requirements while the lawsuit is pending. For more information on the three legal challenges and to track developments:

- *City of Seattle v. DHS* <https://protectdemocracy.org/project/city-of-seattle-v-dhs/>
- *NWIRP v. USCIS* <https://www.citizen.org/litigation/northwest-immigrant-rights-project-v-u-s-citizenship-and-immigration-services/>
- *Project Citizenship v. DHS* <https://www.ropesgray.com/en/newsroom/news/2019/11/Ropes-Gray-Project-Citizenship-Sue-USCIS-to-Protect-Access-to-Citizenship-for-Low-Income-Immigrants>

⁶ See 8 CFR § 103.7(c)(1)(ii).

⁷ 8 CFR § 103.7(c)(1)(i).

⁸ The USCIS website has been updated to reflect this change. The prior Form I-912 and instructions are again available, see: <https://www.uscis.gov/i-912> (last visited Dec. 2019).

A. Required Use of Form I-912; Each Person Requesting a Fee Waiver Would Have Complete Their Own Form I-912

Under the revised fee waiver process, all individuals requesting a fee waiver would be required to submit their request using Form I-912; USCIS would no longer accept informal, “applicant-generated” fee waiver requests.⁹ By making the use of Form I-912 mandatory and simultaneously narrowing the type of information the applicant may submit to show their inability to pay (see next sections), USCIS would substantially limit the scope of the regulation.¹⁰ Additionally, each individual would have to submit their own fee waiver request, as the revised form would not allow multiple applicants from one family to be included on the same I-912 request. However, one individual would still be able to request a waiver of the fees for several applications with a single Form I-912.

B. No Means-Tested Benefits Basis

The most significant change that was to be implemented was the elimination of the receipt of means-tested benefits as a basis for requesting a fee waiver. The fee waiver process has historically provided three different ways an individual requesting a fee waiver can prove their inability to pay, based on: (1) Receipt of means-tested benefits; (2) Household income at or below 150% of Federal Poverty Guidelines (FPG);¹¹ or (3) Other financial hardship, such as costly medical bills or homelessness. Receipt of means-tested benefits has traditionally been the easiest and most straightforward way both for applicants to prove they qualify for a fee waiver and for adjudicators to assess inability to pay, because a local government agency has already screened the financial resources of a person who has been found to qualify for a means-tested benefit.

The other two bases for proving inability to pay, having a household income at or below 150% of the FPG or other unspecified “financial hardship,” would be the only two options under the proposed changes. An individual requesting a fee waiver could still base their request on one or more of these reasons and submit the relevant supporting evidence.

C. New Required Supporting Evidence – Tax Return Transcripts

The planned revisions also included changes to the supporting evidence required to establish household income and/or financial hardship. Specifically, tax return transcripts or proof of non-filing from the IRS would need to be submitted with a fee waiver request. Under the current process, photocopies of tax returns and W-2’s are typically submitted. Under the revised process, an applicant requesting a fee waiver based on household income at or below 150% FPG would have to provide an IRS tax transcript of their most recent tax return as well as tax transcripts for any household members who also contribute financial support. Those who have no income or were not required to file a tax return (with some allowances for unemployed applicants, the homeless, and those applying for humanitarian forms of relief, see below for more details) would have to provide an IRS statement of non-filing.

As a practical matter, this change would mean that applicants who want to apply for a fee waiver would have to request their tax return transcripts or proof of non-filing directly from the IRS.¹² There are several ways to receive a tax return transcript (note this is distinct from a tax account transcript or other proof of having filed a tax return) in

⁹ Notwithstanding the fact that use of a specific USCIS-published fee waiver request form is not mandated by regulation. See 8 CFR § 103.7(c)(2).

¹⁰ The regulation requires that a person requesting a fee waiver for an immigration benefit “submit a written request for permission to have their request processed without payment of a fee with their benefit request. The request must state the person’s belief that he or she is entitled to or deserving of the benefit requested, the reasons for his or her inability to pay, and evidence to support the reasons indicated.” 8 CFR § 103.7(c)(2).

¹¹ For the Federal Poverty Guidelines used as part of the fee waiver process, see <https://www.uscis.gov/i-912p>. The Federal Poverty Guidelines are available at <https://aspe.hhs.gov/poverty-guidelines> (last visited Dec. 2019).

¹² For more information, see <https://www.irs.gov/individuals/get-transcript>.

order to be able to provide proof of the applicant's adjusted gross income or non-filing status. Information about tax transcripts as well as the online portal and the relevant forms are available in English as well as several other languages at: <https://www.irs.gov/individuals/get-transcript>. This requirement would have resulted in delays in submitting applications for relief since the tax transcript or proof of non-filing is a document that can only be generated by the IRS rather than something an individual would have in their personal financial records.

D. Some Limited Exceptions to Required Information and Evidence for Survivors (SIJS, VAWA, U and T).

Some modifications to the general requirements would be available to applicants applying for a humanitarian form of relief or a related application. While the new form and requirements would be much harsher than the prior version, the process would still ease evidentiary requirements and information collection for pending or approved Special Immigrant Juveniles and VAWA self-petitioners as well as U and T nonimmigrants. For instance, pending or approved VAWA self-petitioners, U nonimmigrants, and T nonimmigrants would not have to provide income information about a spouse, abuser or trafficker, even if the individual is also a household member. Additionally, if these applicants cannot provide required proof of income, they could explain their situation in detail and why they are unable to submit the required documentation, including providing affidavits from religious, non-profit or other community agencies verifying the provision of support services to the victim and their financial situation. Pending or approved Special Immigrant Juveniles would not have to provide proof of income or list household income for a fee waiver request. Advocates have already reported an increase in rejections of fee waiver requests for applicants for humanitarian relief over the last two years and the planned changes would likely exacerbate the problem. For more information about trends in this area, visit ASISTA at: <https://asistahelp.org/>.

E. No Change to the List of Applications for Which Fee Waivers are Available

The types of applications for which a fee waiver may be available—all naturalization applications, all green card renewals, almost all biometrics fees, adjustment and waiver applications for certain immigrants including U and T nonimmigrants, VAWA self-petitioners, TPS grantees, special immigrant juveniles, asylees, and others exempt from public charge inadmissibility—would *not* change under this revised process. Refer to the Form I-912 Instructions for a complete list of which application fees are presently eligible for a fee waiver.¹³ However, see Section III below regarding a current proposal to change the fee rule that would drastically raise application fees and severely limit the applications for which fee waivers are available.

III. Proposed Rule to Increase Fees and Eliminate Most Fee Waivers

A proposed rule to increase application fees and eliminate the availability of most fee waivers was announced on November 14, 2019.¹⁴ The 45-day public comment period runs through December 30, 2019 after which time DHS and USCIS will review the comments and eventually publish a final rule.¹⁵ There is no clear date when the final rule will be published or when it might be implemented, or if the final version will include all the elements of the proposal. DHS will likely publish a final version of the fee rule in 2020, at which point it may go into effect, or litigation may

¹³ Available at <https://www.uscis.gov/i-912>.

¹⁴ U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. 220 (November 14, 2019). Available at: <https://www.federalregister.gov/documents/2019/11/14/2019-24366/us-citizenship-and-immigration-services-fee-schedule-and-changes-to-certain-other-immigration>.

¹⁵ U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 84 Fed. Reg. 236 (December 9, 2019). Available at: <https://www.federalregister.gov/documents/2019/12/09/2019-26521/us-citizenship-and-immigration-services-fee-schedule-and-changes-to-certain-other-immigration>.

be filed that delays its implementation. While the proposed fee rule changes are not in effect at this time, below are some of the most critical aspects of this harmful proposal.

A. Increases Most Fees

Most application fees would increase considerably under the proposed fee rule. At the same time, fee waivers for many applications would be eliminated.

1. Examples:¹⁶

- N-400 for naturalization would increase from \$725 to \$1,170. And the fee waiver currently available for that type of application would be eliminated.¹⁷
- I-821D for DACA renewal would have a fee of \$275 plus \$490 for the I-765 employment authorization application, for a total of \$765. Currently the DACA renewal fee is \$495.
- I-589 for asylum would, for the first time, have a \$50 fee (with limited exceptions for unaccompanied minors).
- I-485 for lawful permanent residence including employment authorization and advance parole document would increase from \$1,225 to \$2,195 because the fees would no longer be bundled. The I-485 fee alone would go from \$1,140 to \$1,120 but there would be additional, separate fees of \$490 for the I-765 employment authorization, and of \$585 for the I-131 for advance parole.

Importantly, applications under VAWA, U visa, T visa, and TPS would continue to have no associated fee as mandated by federal law.¹⁸ However, any associated filings would be subject to the increased fees and revised fee waiver requirements (see below).

B. Eliminates Most Fee Waivers

The proposal would eliminate all fee waivers, except for the small number of applications where they are guaranteed by statute. Some important examples of applications that would no longer have a fee waiver are the N-400 for naturalization and the I-90 to renew or replace a green card. Fee waivers for associated filings of VAWA self-petitioners, T, U, battered nonimmigrant spouses (A, G, E-3, H), VAWA cancellation, or TPS would continue to be available, but the standard for fee waiver eligibility would change, making it more difficult to qualify.

C. Reduces the Annual Income Limit Allowed to Qualify for a Fee Waiver

The proposal would reduce the maximum annual income to qualify for a fee waiver from 150% to 125% of the FPG.¹⁹ For example, the 2019 guidelines set the poverty level for a family of four at \$25,750. Currently, an applicant with a household of four would qualify for a fee waiver if their annual income was 150% or less than that

¹⁶ It is important to note that these are examples only. The fee rule increases fees for almost all immigration filings and associated forms. Details are available at <https://www.federalregister.gov/documents/2019/11/14/2019-24366/us-citizenship-and-immigration-services-fee-schedule-and-changes-to-certain-other-immigration>. (last visited Dec. 2019).

¹⁷ The reduced fee option for naturalization applications, which first went into effect in December 2016 and is filed using Form I-942, would also be eliminated.

¹⁸ The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Section 201(d)(3), [Pub. L. 110-457 \(PDF\)](#), 122 Stat. 5044, 5054 (December 23, 2008) (adding [INA 245\(i\)\(7\)](#)).

¹⁹ The Federal Poverty Guidelines are available at <https://aspe.hhs.gov/poverty-guidelines> (last visited Dec. 2019).

amount, or a maximum of \$38,625. Under the proposal, the same applicant would only qualify if their annual income was at or below 125% of that amount, or a maximum of \$32,187.50. This new calculation means fewer applicants would qualify for a fee waiver.

D. Proposes to Transfer Funds from USCIS to ICE

In the proposed rule, DHS would transfer over \$100 million per year in funds generated from application fees from USCIS to ICE, the agency in charge of immigration enforcement and deportations.

IV. Next Steps for Advocates

A. Help Eligible Applicants File Their Cases Soon

Given the threat of increased fees and the proposed elimination of fee waivers for most types of applications, eligible clients should consider moving forward with applications now if it is in their best interest to do so. Some applicants who do not apply under the current fee structure may be unable to do so in the future because of the prohibitive costs. Reach out to clients who may have been screened by your office and found to be eligible for an immigration benefit but did not follow up on preparing their application. Let them know of the potential coming changes and that now is the time to move forward with the process.

Practice Note: While it is important to help clients take advantage of lower fees and access to fee waivers, it is still important to carefully screen for eligibility and meticulously prepare any application and supporting evidence before submitting a case with USCIS. Recent changes in immigration policy and procedure make applying for an immigration benefit, especially for undocumented persons seeking legal protection for the first time, riskier than in the past. The new RFE and NOID policy²⁰ means that applications can be denied without any notice or request for additional evidence. The current NTA policy²¹ allows USCIS to refer people whose cases have been denied to removal proceedings in immigration court. However, clients who are eligible for a given benefit and have adequate evidence to support their application should speak with an expert about filing their case now in order to take advantage of current fee rates and the availability of fee waivers.

B. Make Your Voice Heard!

There are many ways to support efforts to block these harmful changes and ensure equal access to immigration benefits.

1. Submit a Comment Against these Proposed Changes

The public comment period regarding the proposed fee rule is open until December 30, 2019 and there is a need to highlight the devastating impact these changes would have on immigrant community members and their families. If you or your organization can submit a comment, give examples of clients who would not be able to apply for immigration benefits or naturalizations if the fees go up or fee waivers are eliminated. Provide any data or information you have available about the harm that the proposed fee rule will do. Templates that can help you draft

²⁰ USCIS, Policy Memorandum: Issuance of Certain RFEs and NOIDs; Revisions to Adjudicator's Field Manual (AFM) Chapter 10.5(a), Chapter 10.5(b), (July 13, 2018), https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/AFM_10_Standards_for_RFEs_and_NOIDs_FINAL2.pdf.

²¹ USCIS, Policy Memorandum: Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens PM-602-0050.1 (June 28, 2018), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf>.

a comment are available from various organization, including templates tailored for [direct service providers](#), those working on [naturalization](#), and advocates for immigrant [survivors of domestic violence, human trafficking and other crimes](#).

Encourage staff and clients to use a “click to comment” site to easily submit brief, on-line [comments](#) by providing basic identifying information and highlighting the main reasons they oppose the proposed rule and value the immigrant community.

2. Advocate with Policy Makers

It is also important to engage policy makers and ensure they are aware of these attacks on low-income immigrants. Collect stories about the positive impact of affordable fees and the availability of fee waivers on your clients and their families to share as part of advocacy efforts. There are online tools that can help you find the contact information for your Congressional representatives in the [House of Representatives](#) and the [Senate](#).

3. Stay Informed and Involved

For more information about the proposal, community resources, and other updates on these issues see here: <https://cliniclegal.org/fee-schedule-changes>.



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