UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PROJECT CITIZENSHIP INC. Plaintiff, vs. DEPARTMENT OF HOMELAND SECURITY, KEVIN MCALEENAN, KENNETH CUCCINELLI, AND UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, Defendants.	Case No. COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF ADMINISTRATIVE PROCEDURE ACT CASE

Plaintiff Project Citizenship brings this Complaint against Defendants Kevin McAleenan, in his official capacity as Acting Secretary of Homeland Security; the U.S. Department of Homeland Security ("DHS"); Kenneth Cuccinelli, in his official capacity as Acting Director of U.S. Citizenship and Immigration Services; and U.S. Citizenship and Immigration Services ("USCIS", and together with DHS, Mr. McAleenan, and Mr. Cuccinelli, "Defendants"). In this action, Plaintiff seeks declaratory and injunctive relief barring implementation of an illegal USCIS rule – currently set to take effect on December 2, 2019 – that would dramatically impair the ability of tens of thousands of eligible immigrants to become naturalized U.S. citizens. Plaintiff alleges as follows:

I. INTRODUCTION

1. The naturalization process is regulated by USCIS and is the final step on the long road for "green card" holders, or Lawful Permanent Residents ("LPRs"), to apply for and obtain citizenship in the United States. Immigrants who are eligible to complete the naturalization process are, by definition, individuals whom the government has found to be eligible for permanent resident status, who have shown a deep commitment to and love for this country, and who already have deep roots in our communities.

2. Millions of immigrants are eligible to naturalize each year. *See, e.g.*, U.S. Dep't of Homeland Sec., Office of Immigration Statistics, *Population Estimates: Lawful Permanent Resident Population in the United States: January 2015* 1 (May 2019), https://www.dhs.gov/sites/default/files/publications/lpr_population_estimates_january_2015.pdf (DHS estimates that 9 million lawful permanent residents in the United States were eligible to naturalize as of January 1, 2015). To be eligible to naturalize, immigrants must meet criteria that Congress has determined demonstrates a commitment to this country: good moral character; years of lawful permanent residence and physical presence; proficiency in the English language (in most cases); and an understanding of the nation's history, its government, and its political system. None of these criteria concerns an individual's wealth or social status.

3. In exchange for demonstrating commitment through the aforementioned criteria, naturalized immigrants – new citizens – are granted the right to participate fully in American life. For example, citizens are able to vote, serve on a jury, travel without restrictions, and run for

political office. These are all enormous benefits without which full integration into American society is impossible. Additionally, citizens have access to better economic opportunities than LPRs, including government jobs and certain job-related security clearances, to the ultimate benefit of their communities and the United States as a whole.

4. In addition to LPRs, children who automatically derive citizenship from a U.S.-citizen parent ("Derivative Applicants," or, collectively with LPRs, "Applicants") rely upon USCIS to provide them with official documentation of their citizenship status. Thus, LPRs pursuing the naturalization process can strengthen their family units by obtaining citizenship for Derivative Applicants and by bringing other family members to the United States.

5. Fundamental to the naturalization process is the role of USCIS and its stated goal to "administer[] the nation's lawful immigration system, safeguarding its integrity and promise by efficiently and fairly adjudicating requests for immigration benefits while protecting Americans, securing the homeland, and honoring our values." U.S. Dep't of Homeland Sec., *Citizenship and Immigration Services Overview*, https://www.dhs.gov/topic/overview (last visited Nov. 13, 2019).

6. This case challenges an unlawful measure taken by Defendants that directly undermines this goal by severely limiting the ability of low-income LPRs to apply for naturalization and/or for Derivative Applicants to apply for a certificate of citizenship. Currently, LPRs must pay a $725 fee with an Application for Naturalization, and Derivative Applicants must pay a $1,170 fee with an Application for Certificate of Citizenship. Since 2011, USCIS has maintained a policy of waiving these fees for Applicants who demonstrate one of the following: (1) receipt of a means-tested benefit, such as Medicaid, Supplemental Security Income ("SSI"), Supplemental Nutrition Assistance Program ("SNAP," formerly known as food stamps), or Temporary Assistance for Needy Families ("TANF"); (2) income at or below 150 percent of the Federal Poverty Guidelines; or (3) "financial hardship" evinced by extraordinary circumstances such as job loss or medical expenses.

7. This fee waiver program has allowed hundreds of thousands of immigrants to begin the naturalization process despite having limited financial resources. In 2017, nearly 40 percent of all naturalization applications included a fee waiver. Studies show that fees are a substantial barrier to naturalization and that fee waivers lead to an increase in the number of naturalized citizens.

8. Since its founding in 2014, Plaintiff Project Citizenship has specialized in helping permanent residents in Massachusetts and beyond overcome barriers to U.S. citizenship. Each year, Project Citizenship is responsible for up to 5% of the total naturalization applications to the Boston and Lawrence, Massachusetts USCIS offices. Project Citizenship's mission to ensure that all immigrants understand and have access to the path to citizenship, regardless of their ability to pay, is directly reliant on the fee waiver program.

9. Over the last six years alone, Project Citizenship has helped more than 7,000 LPRs apply for citizenship through its dedicated full-time staff, *pro bono* legal partners, and more than 1,000 trained volunteers. Project Citizenship has a 95% success rate. The majority of naturalization applications that Plaintiff assists in submitting are generated through naturalization workshops it hosts, which are highly streamlined, one-day events fueled primarily by volunteer labor. Plaintiff carefully plans these workshops to maximize efficiency and to ensure its ability to assist as many individuals as possible with limited resources. Workshops are one-stop shops for completing and submitting applications for eligible LPRs and Derivative Applicants, and Applicants are asked to bring all documentation required to complete their naturalization application, including documentation supporting a fee waiver, if one is needed.

10. On October 25, 2019, USCIS announced changes to the established fee waiver qualifications and process that will go into effect on December 2, 2019 (the "2019 Rule"). The 2019 Rule will cripple the ability of low-income Applicants to apply for naturalization or to receive a certificate of citizenship in three critical ways.

11. First, the 2019 Rule removes an Applicant's ability to obtain a fee waiver based upon receipt of a means-tested benefit – by far the most utilized and straightforward method of demonstrating an inability to pay. Applicants who were eligible for a fee waiver based only on receipt of a means-tested benefit are no longer able to apply. Instead, all Applicants must now try to prove eligibility for a fee waiver through significantly more burdensome methods: by establishing that they are at or below 150 percent of the Federal Poverty Guidelines or that they are suffering a financial hardship.

12. By arbitrarily changing the requirements for a fee waiver, USCIS unduly burdens Applicants as well as service providers of naturalization services, such as Plaintiff, and significantly restricts access to naturalization for low-income immigrants. It will also be significantly more burdensome and inefficient for USCIS to adjudicate fee waiver eligibility based

on a case-by-case determination of each individual Applicant's household income or financial hardship.

13. In effect, this change constitutes a wealth test for citizenship, hindering large numbers of low-income LPRs from becoming citizens, despite the fact that they otherwise qualify for citizenship in every way. In the same vein, low-income Derivative Applicants will be prevented from receiving Certificates of Citizenship, which are necessary to demonstrate their unquestionable status as derivative U.S. citizens.

14. Second, the 2019 Rule newly requires Applicants to secure a tax transcript from the Internal Revenue Service ("IRS") to prove their income, rather than submitting copies of tax returns as previously permitted. Tax transcripts – stripped-down summaries of tax returns that are available only from the IRS – can be extremely onerous, particularly for low-income Applicants, to obtain. Additionally, processing tax transcripts for all Applicants will impose a significant new burden on the IRS.

15. Third, the 2019 Rule mandates that Applicants use a specified form to apply for fee waivers, preventing the use of applicant-generated written requests, which have been a valuable alternative for those Applicants who do not have the resources or skills to access or complete the official form.

16. Project Citizenship's workshops have been tailored to USCIS policy as it has existed; workshops produce maximum benefits for Applicants because Project Citizenship is able to address every step of the application process within a single meeting. The 2019 Rule will eviscerate the workshop model and have a devastating effect on Project Citizenship and the individuals and families it serves. Immediately upon going into effect, the 2019 Rule will hinder the ability of Applicants to pursue naturalization, drastically limit the number of future clients Project Citizenship can assist, and ultimately result in fewer eligible individuals applying for citizenship in this country overall.

17. While that appears to have been the underlying purpose of USCIS's rule change, the 2019 Rule is unlawful for three principal reasons.

18. First, despite issuing substantive rule changes that affect the rights of individuals, USCIS did not even attempt to follow the notice-and-comment procedures required under the Administrative Procedure Act ("APA"). Instead, Defendants purported to follow the rubric of the Paperwork Reduction Act ("PRA"), casting what can only be deemed a substantive impediment

to naturalization as a mere matter of paperwork reduction, albeit a fictional one. But the PRA does not provide an alternative to the APA procedures when, as here, an agency is engaged in rulemaking. As a result, USCIS failed to undertake any of the requisite analyses or comply with the other requirements imposed by the APA.

19. Second, the 2019 Rule violates the APA because the changes are arbitrary and capricious. In its notices announcing the rule changes, USCIS claimed that removing means-tested benefit-based applications would resolve inconsistencies in the application process – specifically, supposed inconsistencies in the income levels used by states and localities to determine eligibility for means-tested benefits and thus, by extension, fee waiver eligibility. But USCIS has provided no evidence or data to support this assertion. Nor has it established that the alleged inconsistency has anything to do with an Applicant's "inability to pay" under the governing regulations.

20. Moreover, USCIS has failed to provide any justification for suddenly requiring Applicants to use tax transcripts as the sole means for establishing that their income is at or below 150% of the Federal Poverty Guidelines. Nor did USCIS justify its arbitrary elimination of the previously-permitted applicant-generated requests, instead mandating that naturalization Applicants submit a particular form in order to obtain a fee waiver. But 8 C.F.R. § 103.7(c)(2) does not require an individual to use a form; USCIS's about-face violates the plain language of the regulation and USCIS does not even attempt to provide a reason for it. In short, USCIS has provided only inconsistent, unsupported, and facially irrational justifications for the changes subsumed within the 2019 Rule in further violation of the APA.

21. Third, the 2019 Rule also separately violates the PRA – a statutory scheme intended to ensure that agencies collecting information do so in a way that minimizes the paperwork burden *on the public* (not the agency). These requirements are in addition to – and not a substitute for – the APA's rulemaking procedures. The PRA requires Office of Management and Budget ("OMB") approval of agency-required collections of information following specified procedures. Specifically, USCIS did not comply with the PRA requirement that, before revising its information collection requirements for fee waiver applications, it first complete a multi-factor review that includes an "objectively supported estimate of burden" on the public, 5 C.F.R. § 1320.8(a)(4); "[a] plan for the efficient and effective management and use of the information to be collected, including necessary resources," *id.* § 1320.8(a)(7); and other elements, *id.* § 1320.8(a). *See generally id.* § 1320.5(a)(1)(i).

22. For these reasons and others, the Court should vacate the 2019 Rule, declare it unlawful, and enjoin Defendants from applying it.

II. JURISDICTION AND VENUE

23. This Court has federal question jurisdiction under 28 U.S.C. § 1331 because this action arises under the APA and the PRA.

24. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and (e)(1).

III. PARTIES

A. Plaintiff

25. Plaintiff Project Citizenship is a 501(c)(3) nonprofit organization headquartered in Boston, Massachusetts. Its mission is to provide free, high-quality legal services to LPRs and Derivative Applicants in obtaining U.S. citizenship and Certificates of Citizenship, respectively. As a key part of that mission, Project Citizenship offers free workshops, eligibility screenings, application assistance, legal referrals, and all materials needed to apply for U.S. citizenship.

26. Project Citizenship's work relies upon a network of volunteer attorneys, Department of Justice-accredited representatives, law students, and other trained volunteers. With the assistance of approximately 1,005 volunteers, Project Citizenship held 72 workshops in 2018 alone, assisting 1,575 Applicants.

27. In addition, Project Citizenship works collaboratively with community-based partners throughout New England to provide a range of support services, civics instruction, application assistance, and English for Speakers of Other Languages ("ESOL") classes. As a result, Project Citizenship has helped thousands of LPRs with the naturalization process and Derivative Applicants with the certification process, and has extensive experience with fee waiver applications. Project Citizenship relies heavily upon the ability of its low-income clients to submit applications without substantial burden and unnecessary hardship.

B. Defendants

28. Defendant Department of Homeland Security ("DHS") is the executive department charged with authority over federal immigration law, *see* 6 U.S.C. § 251, and an "agency" within the meaning of the APA, *see* 5 U.S.C. § 551(1).

29. Defendant Kevin McAleenan is the Acting Secretary of DHS and thus deemed the head of the agency with direction, authority, and control over it. *See* 6 U.S.C. § 112(a)(2). Under the Immigration and Nationality Act ("INA"), he is charged with administering and enforcing the

federal immigration and nationality laws. 8 U.S.C. § 1103(a)(1). Defendant McAleenan is being sued in his official capacity.

30. Defendant United States Citizenship and Immigration Services ("USCIS") is a component of DHS, *see* 6 U.S.C. § 271, and an "agency" within the meaning of the APA, *see* 5 U.S.C. § 551(1). USCIS is permitted to charge fees for naturalization services and to provide certain related services "without charge." 8 U.S.C. § 1356(m). USCIS is the arm of DHS that issued the 2019 Rule.

31. Defendant Kenneth Cuccinelli is the Acting Director of USCIS. *See* 6 U.S.C. § 271(a)(2). Among the functions delegated to the USCIS Director are "establish[ing] the policies for performing" functions including "[a]djudications of naturalization petitions." 6 U.S.C. §§ 271(a)(3)(A), (b)(2). Defendant Cuccinelli is being sued in his official capacity.

IV. SUBSTANTIVE ALLEGATIONS

A. Naturalization

1. The Benefits of Naturalization

32. The Constitution recognizes two pathways to citizenship: by birth and by naturalization. U.S. Const. amend. XIV, § 1. Recognizing the importance of having a clear process for immigrants to become citizens, the First United States Congress passed the country's first Naturalization Act in 1790, just a year after the Constitution went into effect. 1 Stat. 103.

33. Since that time, the United States has always maintained a process by which immigrants who have made a permanent commitment to the United States can formalize that relationship by becoming citizens. The United States has historically "exhibit[ed] extraordinary hospitality to those who come to our country," with "[o]ne indication of this attitude [being] Congress' determination to make it relatively easy for immigrants to become naturalized citizens." *Foley v. Connelie*, 435 U.S. 291, 294 & n.2 (1978).

34. To be eligible to naturalize under current law, most immigrants must (1) have been a Lawful Permanent Resident ("LPR"), also known as a "green card" holder, for five years; (2) be able to read, write, and speak basic English; (3) have a basic understanding of United States history and government; (4) be a person of good moral character; and (5) demonstrate an attachment to the principles and ideals of the United States Constitution. 8 U.S.C. §§ 1423, 1424, 1427.

35. In addition, most Applicants must be able to show, among other requirements, (1) three months' residence in the state from which they are applying, (2) continuous residence in the United States for five years prior to applying for naturalization, and (3) physical presence in the United States for at least 30 months out of the five years before applying for citizenship. 8 U.S.C. § 1427.

36. Among the chief benefits of citizenship are the rights to vote, apply for government jobs, serve in the military, run for elected office, and to serve on a jury. *See, e.g.*, U.S. Citizenship and Immigration Servs., M-476, *A Guide to Naturalization* 3 (rev. Nov. 2016), https://www.uscis.gov/sites/default/files/files/article/M-476.pdf. Put simply, naturalization allows the full and free participation in this nation's democracy.

37. There are additional tangible benefits only obtained once naturalized. For example, while LPRs face restrictions on international travel, naturalized citizens do not, and they can travel internationally with U.S. passports. *Id.* Further, unlike LPRs, naturalized citizens cannot be deported. Naturalized citizens are also eligible for state and federal government benefits that are not available to LPRs.

38. Naturalization is also associated with substantial improvements in economic and professional opportunities, including access to jobs requiring high-level security clearance. On average, naturalized citizens can see their earnings increase by eight to eleven percent. Naturalization alone may result in a wage premium of at least five percent, even when controlling for education, language skills, work experience, and other factors that might otherwise explain a wage gap. Naturalized citizens are more likely to own their own homes and build assets.

39. The economic benefits of naturalization are attributable, at least in part, to the fact that a naturalized citizen is better able to find the right job – including a highly skilled job – and to switch jobs if necessary. Naturalized citizens also have access to certain government jobs, and jobs in licensed professions that are not open to noncitizens. *See, e.g.*, 8 U.S.C. § 1621. Additionally, naturalized citizens experience less employment discrimination than noncitizens.

40. The benefits of naturalization extend to the families of naturalized citizens. Children under the age of 18 automatically become citizens once their parents naturalize. 8 U.S.C. § 1431(a). These Derivative Applicants are eligible to apply for a Certificate of Citizenship from the government that serves as tangible evidence of their citizenship status. Naturalized citizens, unlike LPRs, can also file immigration petitions to reunite with certain family members, such as

parents, siblings, and married sons and daughters. *See* 8 U.S.C. §§ 1151(b)(2)(A)(i), 1153 (a)(1)-(4).

41. When more individuals are eligible to, and do, participate in the political process, our government is stronger and tends to enact policies that more fully reflect the needs of the entire populace. By opening the door to political participation, naturalization helps to ensure that our representative government is truly representative.

2. The Naturalization Application Process

42. For LPRs seeking to become U.S. citizens, naturalization marks the final step in a long journey.

43. An LPR begins the application process by filling out USCIS Form N-400, the naturalization application. This 20-page form requests detailed information, including information about the Applicant's residence, parents, marital history, children, employment and education, and travel outside the United States. It also asks more than 40 questions about the Applicant's moral character and commitment to the United States; many of the questions have legal implications and are written at an advanced English level.

44. After completing the form, an LPR must collect required documents. Depending on an Applicant's reason for eligibility, these can include, among other things, a Permanent Resident Card, birth certificate, marriage certificate, and proof of termination of all prior marriages. The LPR must mail these documents, together with the application form and fee, to a USCIS "Lockbox Facility."

45. After the application is processed, LPRs are sent a letter with a date and location for a biometrics appointment. When the date comes, the LPR travels to the location to be fingerprinted and may have to also provide photographs and a signature. Afterward, the LPR waits to hear about their status and may be required to provide additional documents, or to be fingerprinted again.

46. Once the documents and biometrics are in order, USCIS schedules an interview for the LPR, at which a USCIS officer asks detailed questions about the Applicant's background, residence, moral character, and allegiance to the United States. The officer also administers an English test (unless the LPR qualifies for a narrow exemption) and a civics exam with questions about American politics and history.

47. After the interview, the LPR waits to receive a decision. The application is either denied, continued (in which case a second interview is scheduled or more documents are requested), or approved. Approved LPRs attend a ceremony where they become American citizens after taking an oath to support and defend the Constitution and laws of this nation.

3. Naturalization Application Fees and Fee Waivers

48. Congress has authorized USCIS to collect fees to cover the costs of its operations, including any costs associated with processing immigration applications. 8 U.S.C. § 1356(m). Pursuant to that authority, USCIS has set the total fee for naturalization applications at $725. The fee for Form N-600, Application of Certificate of Citizenship (for Derivative Applicants), is $1,170.

49. For many low-income Applicants, the application fee is a major barrier to applying for naturalization or for a Certificate of Citizenship. It can often mean the difference of being able to pay rent, secure food for their family, keep up with medical bills, and pay all the other expenses families incur on a daily basis. Research, and Plaintiff's own experience, demonstrate that the application fee can preclude eligible LPRs from applying for citizenship. *See, e.g.*, Jens Hainmueller et al., *A Randomized Controlled Design Reveals Barriers to Citizenship for Low-Income Immigrants*, 115(5) Proceedings of the Nat'l Acad. of Sci. of the United States of Am. 939, 939 (2018) ("Offering [a] fee voucher increased naturalization application rates by about 41%, suggesting that application fees act as a barrier for low-income immigrants who want to become US citizens.").

50. Because of the significant expense associated with naturalization, Congress has enacted a way for USCIS to provide services "without charge" to certain immigrants. 8 U.S.C. § 1356(m). Pursuant to that authority, USCIS promulgated 8 C.F.R. § 103.7(c), setting out the parameters of the fee waiver program. It states that to be eligible for a fee waiver, Applicants must be "unable to pay the prescribed fee." *Id.* at § 103.7(c)(1)(i). Additionally,

> To request a fee waiver, a person requesting an immigration benefit must 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. There is no appeal of the denial of a fee waiver request.

Id. at § 103.7(c)(2). A fee waiver form has never been required, and, prior to the release of form I-912, USCIS considered fee waiver requests based on "the totality of all factors, circumstances, and evidence the Applicant supplies …, as well as other factors associated with each specific case." Interoffice Memorandum, U.S. Citizenship and Immigration Servs., Fee Waiver Guidelines as Established by the Final Rule of the Immigration and Naturalization Benefit Application and Petition Fee Schedule (July 20, 2007), https://www.uscis.gov/sites/default/files/USCIS/Laws%20and%20Regulations/Memoranda/July%202007/FeeWaiver072007.pdf.

51. Since the fee waiver program's implementation, fee waivers have played an important role in making naturalization accessible to many eligible LPRs. According to researchers from the University of Southern California, approximately 32 percent of all naturalization-eligible adults qualify for a fee waiver based on income alone. Consistent with that statistic, almost 40 percent of naturalization applications filed in 2017 included a fee waiver request.

52. Project Citizenship experiences an even higher percentage of fee waiver requests – 73% of naturalization applications filed by Project Citizenship include a fee waiver request.

4. The 2010 Notice and 2011 Policy Memorandum Regarding Fee Waivers

53. In June 2010, USCIS published a notice to the Federal Register (the "2010 Notice"), attached as Exhibit ("Ex.") A, proposing changes to USCIS's fee waiver regulation for naturalization applications, 8 C.F.R. § 103.7(c). USCIS Fee Schedule, 75 Fed. Reg. 33,446 (proposed June 11, 2010) (to be codified at 8 C.F.R. pts. 103, 204, 244, 274A). Among other things, USCIS restructured the section "to list fees that can be waived, rather than those that cannot be waived[.]" USCIS Fee Schedule, 75 Fed. Reg. at 33,478.

54. In connection with the 2010 Notice, USCIS also created a form that naturalization Applicants could use to request a fee waiver. The form, known as Form I-912, was designed to "bring clarity and consistency to the fee-waiver process." U.S. Citizenship and Immigration Servs., Policy Memorandum (Mar. 13, 2011).

55. In 2011, USCIS issued policy guidance clarifying how it would decide future fee waiver requests (the "2011 Policy Memorandum"), attached as Ex. B. U.S. Citizenship and Immigration Servs., Policy Memorandum (Mar. 13, 2011). The 2011 Policy Memorandum set out three main ways in which a naturalization Applicant could prove eligibility for a fee waiver.

56. First, Applicants could submit proof that they currently received a means-tested benefit, such as Medicaid, SSI, SNAP, or TANF. *Id.* at 5. These and other means-tested benefits are approved and offered by local government agencies to low-income individuals and families in order to ensure that they have access to the basic necessities of daily living. Receipt of a means-tested benefit was, therefore, determined to be a good indicator that an individual deemed unable to pay for daily needs such as food and medical care would similarly not be able to pay the naturalization fee required to become a U.S. citizen. Applicants could easily provide valid proof of means-tested benefits by means of a letter, notice, or other official document obtained directly from the benefit-granting agency. Once an Applicant proved that they were receiving a means-tested benefit, "the fee waiver w[ould] normally be approved, and no further information w[ould] be required." *Id.* at 5.

57. Second, if an Applicant could not show proof of a means-tested benefit, they could still receive a fee waiver by proving that their income was at or below 150 percent of the Federal Poverty Guidelines. *Id.* at 6. To do that, the 2011 Policy Memorandum requested evidence of the Applicant's wages, other sources of income, and, if available, federal tax returns. *Id.*

58. Third, if an Applicant did not receive a means-tested benefit and could not prove that his or her income was at or below 150 percent of the Federal Poverty Guidelines, he or she could still demonstrate eligibility for a fee waiver by showing "financial hardship, due to extraordinary expenses or other circumstances, that renders [the individual] unable to pay the fee," such as significant uninsured medical bills. *Id.* at 7. The 2011 Policy Memorandum directed employees evaluating financial hardship to consider proof of the Applicant's overall assets, liabilities, and expenses. *Id.* at 7-8.

59. As USCIS noted when it issued the 2011 Policy Memorandum, "the use of a USCIS-published fee-waiver request form is not mandated by regulation." *Id.* at 2. Fee waiver requests made without the use of Form I-912 were known as "applicant-generated" requests. *Id.*

60. An applicant-generated request required only a statement giving "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 C.F.R § 103.7(c)(2). Thus, Applicants were free to apply for a fee waiver without using the specific Form I-912 and could substitute a written reason and supporting evidence tailored to the Applicant's individual circumstances.

61. The simplification and standardization of fee waiver applications after 2010 have had a significantly positive impact on rates of naturalization among low-income Applicants, non-English-speaking Applicants, and Applicants with lower education levels. Analyzing federal immigration and census data, Stanford University researchers recently found that the introduction of Form I-912 increased the naturalization rate by about 1.5 percent. Vasil Yasenov et al., *Standardizing the Fee Waiver Application Increased Naturalization Rates of Low-Income Immigrant*s, 116(34) Proceedings of the Nat'l Acad. of Sci. of the United States of Am. 16768-72, 6 (2019). It represents an estimated 75,318 low-income LPRs who were able to apply for and become citizens as a result of more standardized fee waiver access in 2013 alone. *See id.*

62. Ease of access to a fee waiver has had the greatest "impact on precisely those LPR groups who are most likely to be deterred by burdensome, complicated application processes" – including "households without an English speaker[], . . . immigrants in the lowest income [brackets,]" and "individuals with lower education levels." *Id.* at 7.

63. Moreover – and most critically for Plaintiff – researchers believe that higher rates of naturalization are driven by the improved efficiency with which immigration service providers are able to navigate the administrative process of determining and documenting prospective Applicants' fee waiver eligibility. *See id.* at 7–8. In fact, service provider assistance "is by far the most important predictor of fee waiver use." *Id.* at 8. This detailed research underscores what Project Citizenship has learned from years of experience: if its ability to effectively and efficiently serve clients is curtailed, the number of N-400 and N-600 applications will decrease—to the detriment of eligible LPRs, Derivative Applicants, and Plaintiff.

B. The 2019 Rule

64. On October 24, 2019, USCIS published a new Form I-912 (the "Revised Form I-912") (attached as Ex. C) for Applicants to use when making application fee waiver requests. On the following day, October 25, 2019, USCIS officially announced changes to the fee waiver process and eligibility criteria for Applicants seeking naturalization and other immigration benefits. U.S. Citizenship and Immigration Servs., Policy Alert (Oct. 25, 2019). These announcements included a new policy alert, attached as Ex. D, U.S. Citizenship and Immigration

Servs., Policy Alert (Oct. 25, 2019), and revisions to USCIS's policy manual, attached as Ex. E[1], which provides guidance on the Revised Form I-912.

65. Together, the Revised Form I-912, the policy alert, and revisions to the policy manual (collectively, hereinafter the "2019 Rule") change the fee waiver process in a manner that will substantially reduce naturalization rates among the fee waiver-eligible population. The effective date for the 2019 Rule is December 2, 2019. Ex. D at 1.

66. The 2019 Rule makes three major changes to the naturalization application fee waiver process, all of which reduce access to naturalization for low-income immigrants: (i) it eliminates fee waiver eligibility based on evidence of means-tested benefits; (ii) it requires tax transcripts in lieu of tax returns to prove an Applicant's income; and (iii) it eliminates applicant-generated fee waiver requests.

1. Removal of Eligibility Based on Means-Tested Benefits

67. Approximately 93% of all fee waiver Applicants assisted by Project Citizenship were supported by means-tested benefit evidence.

68. The 2019 Rule eliminates the receipt of means-tested benefits as a way to establish eligibility for a fee waiver. Even though states and localities have already determined that individuals receiving means-tested benefits require financial assistance to meet their basic needs, Applicants will be able to establish their eligibility for a waiver only by proving that their income is at or below 150 percent of the Federal Poverty Guidelines or by independently showing a "financial hardship." Ex. D at 1.

69. This change will eliminate access to a fee waiver for those Applicants who receive means-tested benefits, have an income greater than 150% of the Federal Poverty Guidelines, cannot prove they are suffering what USCIS considers to be other "financial hardships," and still cannot afford the naturalization application fee. In addition, as explained below, Applicants who may still qualify for a fee waiver will be subject to a significant burden in attempting to prove their eligibility by other means. Finally, the 2019 Rule will greatly increase the burden on USCIS in adjudicating fee waiver requests and will decrease efficiency across government agencies more generally.

[1] Exhibit E contains relevant excerpts from the current policy manual, which was last updated on November 6, 2019. The exhibit includes the policy manual's introductory section, as well as Chapters 1 and 4 from Volume 1, Part B.

(a) *The Federal Poverty Guidelines do not adequately measure "ability to pay."*

70. The Federal Poverty Guidelines provide an unreliable and overly narrow basis for determining "inability to pay."

71. The Federal Poverty Guidelines are uniform for the 48 contiguous states and attempt to determine individual or family poverty based on income. Critically, these Guidelines do not account for the cost of living of any particular state or locality, despite drastic differences in the cost of living across the country. For example, under a strictly income-based criterion for a fee waiver, rural residents will be judged under the same 150% of the Federal Poverty Guidelines as residents of Boston, Massachusetts. A household of three is capped under the 2019 Federal Poverty Guidelines at $31,995 per year for an income-based fee waiver, regardless of the cost of living in the urban or rural setting. Quite evidently, the Federal Poverty Guidelines do not reflect the stark disparities among naturalization Applicants' actual ability to pay fees depending on where they live.

72. The federal government has recognized that these discrepancies limit the usefulness of the Federal Poverty Guidelines in certain states and localities, and has allowed states and federal agencies to use different measures of an Applicant's "inability to pay" in administering federally funded means-tested benefit programs. For example, Massachusetts's SNAP program is available to categorically eligible households, such as families living with children under the age of 19, earning up to 200% of the Federal Poverty Guideline, reflecting the higher cost of living in the state. This means a family of four may be eligible for nutrition assistance if it earns less than $51,000—even though the family would not be "poor" under the Federal Poverty Guidelines.

73. For these reasons, the Federal Poverty Guidelines, taken alone, are an inadequate and outmoded measure of an Applicant's ability to pay the naturalization fee. Preventing USCIS adjudicators from considering receipt of means-tested benefits, and requiring them to reevaluate the eligibility of low-income individuals who have already met stringent standards at state and federal levels, blinds the agency to significant differences in cost of living that the federal government itself considers and accommodates in countless other settings.

(b) *Proving income is extremely burdensome.*

74. At the same time, it is much more burdensome for Applicants to demonstrate income at or below 150% of the Federal Poverty Guidelines, especially given the associated changes imposed by the 2019 Rule.

75. Proving income level is very difficult for many fee waiver-eligible Applicants. This is particularly the case for much of the population that Project Citizenship services. Many low-income immigrants engage in irregular or seasonal work, hold informal employment (such as house cleaning or babysitting), have multiple part-time jobs, or are elderly and no longer employed. Additionally, roughly 22% of Plaintiff's clients require a translator and qualify for exemption from the naturalization process's English-language requirement. Other Applicants who receive a means-tested benefit, such as SSI recipients, have disabilities that make administrative or logistical tasks difficult without significant assistance. All of these Applicants have a difficult time demonstrating their income for the purposes of the fee waiver application and thus are often dissuaded from applying due to the burdensome nature of such an application.

76. For the last decade, receipt of a means-tested benefit has been far and away the most straightforward way to prove eligibility for a fee waiver. A single letter from a state agency confirming an individual's receipt of a means-tested benefit has been sufficient to establish the need for a fee waiver. Ex. B at 5. Eliminating this option, as the 2019 Rule does, will substantially increase the burden on Applicants completing a fee waiver request by requiring them to re-prove their income and supply tax records, if only to prove why tax returns were not filed or why or how a person has no income. As a result, a great number of fee waiver-eligible Applicants will not be able to comply with the new evidence requirements.

(c) *Proving financial hardship is extremely burdensome.*

77. The "financial hardship" standard for fee waiver eligibility is not an adequate substitute for the means-tested benefit process. In Project Citizenship's experience, USCIS rarely grants hardship-based fee waivers. The instructions for the Revised Form I-912 state that a basic inability to meet one's expenses is not a sufficient basis for a hardship-based fee waiver, and that this ground for a waiver is available only in "special circumstances," such as "medical expenses of family members, unemployment, eviction, victimization, [and] homelessness." U.S. Citizenship and Immigration Servs., *Instructions for Form I- 912, Request for Fee Waiver* 8 (Oct. 24, 2019), https://www.uscis.gov/system/files_force/files/form/i-912instr.pdf?download=1. Even

under the current fee waiver system, proving such a hardship is an extremely burdensome process. Applicants have to show evidence of their income, which, as explained above, is likely to be difficult for low-income immigrants.

78. The 2019 Rule makes proving financial hardship even more burdensome in a number of ways. The 2019 Rule, along with the Revised Form I-912 that accompanies it, requires a wealth of additional paperwork from Applicants. For example, Applicants who are unemployed must produce a letter of termination from their previous employer if they are not receiving unemployment benefits. This requirement is not realistic, particularly for individuals who are employed temporarily or seasonally. In agriculture and other industries, where human resources personnel are not likely to be present at the worksite, a former worker may have no way of reaching their previous employer to obtain such a letter. Additionally, financial hardship must now be evidenced by proof of assets, an itemized list of the Applicant's average monthly expenses and liabilities, and a tax transcript from the IRS.

2. Requirement to Use Revised Form I-912

79. The Revised Form I-912 requires that fee waiver Applicants use the form itself when seeking a fee waiver. Ex. D at 1. Previously, USCIS accepted "applicant-generated" fee waiver requests in lieu of those submitted on Form I-912. Ex. B at 2.

80. The regulations require only that Applicants seeking a fee waiver submit "a written request for permission to have their request processed without payment of a fee," and include "evidence to support the reasons" for an inability to pay. 8 C.F.R. § 103.7(c)(2).

81. USCIS has even acknowledged that "the use of a USCIS published fee-waiver request form is not mandated by regulation." Ex. B at 2.

82. Accordingly, USCIS has historically reviewed written requests for fee waivers without regard to whether Applicants used Form I-912. For instance, Applicants could write a letter explaining why they could not afford the fee and attach evidence to support that request. In fact, all fee waiver requests prior to the issuance of Form I-912, were submitted in this manner.

83. Arbitrarily eliminating the applicant-generated request option places an unnecessary burden on Applicants to locate, translate (if needed), complete, and submit the Revised Form I-912, even though a self-generated request can easily accomplish the same goal.

C. Defendants' Promulgation of the 2019 Rule

84. USCIS issued three public information collection notices in advance of formalizing the 2019 Rule. Those notices were published in the Federal Register on September 28, 2018 (the "September 2018 Notice"), April 5, 2019 (the "April 2019 Notice"), and June 6, 2019 (the "June 2019 Notice") (collectively, "the Notices"). *See* 84 Fed. Reg. 26137 (June 5, 2019); 84 Fed. Reg. 13687 (April 5, 2019); 83 Fed. Reg. 49120 (Sept. 28, 2018). Shortly after publishing the September 2018 Notice, USCIS also published a proposed new Form I-912. *See* U.S. Citizenship and Immigration Servs., *Proposed I-912 Fee Waiver Form Revision* (Sept. 27, 2018), https://www.uscis.gov/news/alerts/proposed-i-912-fee-waiver-form-revision. Additionally, Defendants purported to respond to public comments to the Notices on three separate occasions. These responses are attached as Exs. F-H.

85. USCIS stated that it issued these notices under, and in accordance with, the requirements of the PRA. Defendants took the position that the 2019 Rule was not subject to the APA's notice-and-comment rulemaking procedures.[2] The PRA – a statutory scheme that addresses the burden imposed on the public by agency-related collections of information – is, not surprisingly, less formal than the APA and contains less rigorous requirements. As USCIS admits, "PRA notices do not rise to the level of notice and comment rulemaking." Ex. F at 3.

86. Significantly, the PRA does not provide agencies with a more streamlined *alternative* to the APA's rulemaking procedures. Rather, the PRA addresses an entirely separate issue – whether agencies collect information in a manner that minimizes the paperwork burden on the public. An agency engaged in collecting information must comply with the PRA's requirements regardless of whether its collection efforts also rise to the level of a rulemaking subject to the APA. By the same token an agency engaged in rulemaking must comply with the APA, regardless of whether it also is engaged in information-gathering subject to the PRA's requirements.

[2] *See, e.g.*, Ex. F at 1-3; Ex. G at 4-5, 9; Ex. H at 4, 6.

1. The Administrative Procedure Act's Notice-and-Comment Rulemaking Procedures

87. The APA requires an agency to follow a specific set of procedures before implementing a new or revised rule. These procedures include a proposed rule, a comment period, and a final rule.

88. First, notice-and-comment procedures require that "[g]eneral notice of proposed rulemaking shall be published in the Federal Register." 5 U.S.C. § 553(b).

89. Next, the agency must institute a comment period that "give[s] interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments." *Id.* at § 553(c). At the end of the comment period, the agency "must consider and respond to significant comments received during the period for public comment," *Perez v. Mortg. Bankers Ass'n*, 135 S. Ct. 1199, 1203 (2015), and publish a final rule that includes a "concise general statement of the [rule's] basis and purpose." 5 U.S.C. § 553(c).

90. Finally, when the agency promulgates the final rule, it must include in the rule's text "a concise general statement of [its] basis and purpose." *Id.* Rules issued through the notice-and-comment process are often referred to as "legislative rules" because they have the "force and effect of law." *Chrysler Corp. v. Brown*, 441 U.S. 281, 302–03 (1979) (internal quotation marks omitted).

91. Agencies must not be arbitrary and capricious when promulgating rules but "must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made. In reviewing that explanation, [a court] must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *Motor Veh. Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal quotation marks and citations omitted).

92. "Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Id.*

2. The Paperwork Reduction Act's Less Rigorous Information Collection Procedures

93. The PRA gives the Office of Management and Budget (the "OMB") authority over the collection of information by federal agencies in order 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." 44 U.S.C. § 3501(1). In other words, the PRA is intended to minimize paperwork burden *on the public*, not on the agency collecting the information.

94. The Director of the OMB "shall promulgate rules, regulations, or procedures" to implement the PRA. *Id.* § 3516. Under the PRA, an agency cannot conduct a "collection of information"[3] unless it complies with such regulations. 5 C.F.R. § 1320.5(a)(1).

95. There are three steps an agency must follow under current OMB regulations to comply with the PRA.

96. First, an agency must complete a review of its proposed collection of information. The agency's review must include, among other things, an evaluation of the need for the collection, an objective evaluation of the burden imposed on the public by the collection, and "[a] plan for efficient and effective management and use of the information." 5 C.F.R. § 1320.8.

97. Second, the agency must "provide 60-day notice in the Federal Register" describing the collection of information. 5 C.F.R. § 1320.8(d)(1). The notice must solicit public comment to evaluate if the proposal is necessary for the proper performance of the agency's functions, evaluate the accuracy of the agency's estimate of paperwork burden on the public, and "minimize the burden of the collection of information on those who are to respond." *Id.* The agency must "evaluate[] the public comments received." 44 U.S.C. § 3507(a)(1)(B).

98. Third, an agency must submit the collection of information to the OMB for approval. In doing so, the agency must "demonstrate that it has taken every reasonable step to ensure that the propos[al]" is "the least burdensome necessary for the proper performance of the

[3] "Collection of information means . . . the obtaining, causing to be obtained, soliciting, or requiring the disclosure to an agency, third parties or the public of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, ten or more persons, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit." 5 C.F.R. § 1320.3.

agency's functions" and "minimize[s] the cost to [the agency]" without "shifting disproportionate costs or burdens onto the public." 5 C.F.R. § 1320.5(d)(1).

3. Defendants' Issuance of Three Information Collection Notices for the 2019 Rule

99. Defendants issued three separate information collection notices for the 2019 Rule under the PRA.

100. The first notice was issued in September 2018 (the "September Notice"). The September Notice stated that the proposed change to Form I-912 "streamlines and expedites USCIS's review, approval, or denial of the fee waiver request by clearly laying out the most salient data and evidence necessary for the determination of inability to pay." 83 Fed. Reg. at 49,121. While focused on the streamlining of its *own* review, nowhere did USCIS provide the PRA's required analysis of how the changes would minimize the paperwork burden on Applicants.

101. With respect to the means-tested benefit standard in particular, USCIS stated that 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." 84 Fed. Reg. 26137; 84 Fed. Reg. 13687; 83 Fed. Reg. 49120. USCIS provided no data to support this assertion, nor did it provide any explanation as to why the use of means-tested benefits was incompatible with the standard, set forth in the regulation, that fee waivers should be awarded based on an Applicant's "inability to pay."

102. Individuals and organizations across the country submitted 1,198 comments to the September Notice. Comments submitted by immigrant rights groups and legal services organizations – including Plaintiff Project Citizenship – emphasized the devastating effect the rule change would have.

103. In April 2019, USCIS published a second, near-identical notice in the Federal Register (the "April Notice"). 84 Fed. Reg. 13,687. This time, USCIS solicited comments by email only and did not publish them online. *Id.* The April 2019 Notice did not revise USCIS's proposed rule changes.

104. Individuals and organizations, including Project Citizenship submitted additional comments to the April Notice, again outlining the devastating impacts of the rule change.

105. In June 2019, USCIS published the third and final Notice in the Federal Register (the "June Notice"). 84 Fed. Reg. 26,137. In the June Notice, USCIS did not revise its proposed rule changes for the naturalization application fee waiver process in any way.

106. In the June Notice, USCIS acknowledged that "as a result of this change there are some applicants who would be able to receive free adjudication now who will not be able to after this policy change." *Id.* at 26,139. The June Notice did not address any of the comments received in response to the September Notice or the April Notice. It did, however, offer a brand new justification for the 2019 Rule: that USCIS needed to "curtail[]" the growing use of fee waivers in order "to reduce annual forgone revenue from fee waivers." *Id.* The June Notice went on to clarify that: "In addition to curtailing the rising costs of fee waivers, this proposed policy change is intended to introduce more consistent criteria for approving all fee waivers. USCIS 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." *Id.*

107. Yet again, Project Citizenship and other concerned individuals and organizations submitted comments outlining the devastating impacts of the rule change and responding to USCIS's statements in the June Notice.

108. The OMB approved the Revised Form I-912 on October 24, 2019, and USCIS publicly released a final copy of the form and associated documents on October 25, 2019.

D. Defendants Were Required to Comply with the APA's Notice-and-Comment Rulemaking Procedures

109. Defendants did not undertake the APA notice-and-comment rulemaking procedures in connection with the 2019 Rule, instead taking the position that only the less-rigorous PRA standard applied. Defendants were required to comply with the APA's rulemaking procedures.

110. By terming the 2019 Rule a mere "information collection activity" and invoking the PRA procedures, USCIS sought to avoid the more rigorous requirements of APA notice-and-comment rulemaking.

111. However, all rules must go through APA notice-and-comment rulemaking, absent those that fit into one of three narrow exceptions: "interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice." 8 U.S.C. § 553(b)(A).

1. The 2019 Rule is substantive, not interpretive

112. The 2019 Rule is much more than a PRA "information collection activity" for the purpose of interpreting existing rules; it substantively changes the standards by which the agency determines eligibility for a fee waiver.

113. In contrast to an interpretative rule, a "substantive" rule affects "individual rights and obligations," and must go through APA notice-and-comment rulemaking. *See Chrysler Corp. v. Brown*, 441 U.S. at 302 (1979). This includes regulations that are "binding . . . [on] the agency and regulated parties, [and] also on the courts." *Warder v. Shalala*, 149 F.3d 73, 82 (1st Cir. 1998).

114. The 2019 Rule imposes binding substantive changes regarding fee waiver applications that affect Applicants' individual rights and obligations. In fact, its primary purpose is to impact the fee-paying obligations of Applicants. Under the 2019 Rule, all Applicants who will request a fee waiver with their application are prohibited from using receipt of a means-tested benefit as part of their request. Significantly, the USCIS expressly conceded that "as a result of this change there are some applicants who would be able to receive free adjudication now who will not be able to after this policy change." 84 Fed. Reg. at 26,139.

115. In addition to those Applicants who can no longer satisfy any "ability to pay" standard without the means-tested benefit as a possibility, even those who can otherwise establish financial hardship will be obligated to undergo a far more onerous process in order to do it. Proof of low income requires a showing that the fee waiver applicant has income at or below 150 percent of the Federal Poverty Guidelines. Under Revised Form I-912, this requires an Applicant to demonstrate annual income through submission of an official IRS tax transcript, which summarizes certain information from a federal tax return, including Adjusted Gross Income.

116. The tax transcript requirement is a significant additional obligation. Plaintiff is unaware of any public assistance program that has ever required a tax transcript in support of a means-tested waiver request. Although tax transcripts themselves are free, actually obtaining a tax transcript can be cumbersome, particularly for taxpayers who lack financial resources. For example, obtaining a tax transcript from the IRS's online service requires (1) information from past tax records, (2) an email address, (3) a personal account number for a credit card, mortgage, home equity loan, home equity line of credit, or car loan, and (4) a mobile phone with the taxpayer's name on the account.

117. In Plaintiff's experience as a long-time provider of naturalization services, it is unusual for low-income Applicants to have a mortgage, home loan, car loan, or credit card. Many Applicants do not have a billable cell phone service, relying instead on prepaid SIM cards, and many do not regularly use email. Indeed, few of Project Citizenship's clients have access to computers. Approximately 22% of Plaintiff's clients do not speak English and are language-exempt due to age. An additional 12.6% of Plaintiff's clients seek a language and civics waiver due to physical and cognitive disability. Notably, the IRS website is only available in five languages other than English, imposing additional barriers for people who do not speak or read those languages well enough to navigate complex administrative processes. While basic English is required for most non-elderly permanent residents to naturalize, understanding the IRS website is likely to exceed the English abilities of many qualified immigrants.

118. If any one piece of required information is not available or does not exist, a fee waiver Applicant will have to file a transcript request by mail and wait to receive a mailed response, which typically takes one to two weeks. However, if the Applicant has moved since filing his or her last tax return, he or she will first have to file a change of address form, wait four to six weeks for that to be processed, file a transcript request by mail, and then wait for a response. All of this – assuming the Applicant is able to get this far in the process – unnecessarily increases the time by which the Applicant can even submit a fee waiver application by at least eight weeks.

119. Additional documentation will be required for a significant portion of the Applicants Project Citizenship assists: Applicants who have recently changed employment must provide pay stubs for the past month; unemployed Applicants who receive unemployment benefits must submit IRS form 1099-G, and those who do not receive unemployment benefits must provide a letter of termination from their previous employer; families with income so low that they do not pay taxes must provide a recent W-2 and documentation of any social security income received. Applicants may not be able to obtain this evidence at all. Even where this information is available, collection of the documentation is time-consuming and may deter applicants altogether.

120. This new burden is worsened by the requirement that, to apply for an income-based fee waiver, Applicants need to establish income for every individual household member. As an initial matter, it may be difficult or impossible for Applicants to obtain and submit information for certain household members, providing a further burden and deterrent on eligible applicants. Even where comprehensive household member information can be obtained, the burden of collecting

and assessing it is substantial. For example, an applicant will have to provide their spouse's tax information if that spouse is a member of her household and has filed separately. As another example, college students will have to submit parental tax information, requiring parental consent and social security numbers, if they are members of their parents' household and vice versa.

121. Additionally, under Revised Form I-912, Applicants are obligated to submit the form itself instead of maintaining the option of using an applicant-generated request. This is a major substantive change. The DHS regulation that permits USCIS to waive naturalization application fees upon an Applicant's "written request," - 8 C.F.R. § 103.7(c)(2) – provides each individual Applicant with the discretion to choose how to demonstrate an inability to pay and what evidence to present. USCIS has acknowledged that "the use of a USCIS-published fee-waiver request form is not mandated by regulation." Ex. B at 2. The 2019 Rule thereby inverts 8 C.F.R. § 103.7(c)(2), removing valuable options that were previously available to Applicants in their presentation of a request and supporting evidence for a fee waiver application. Now, under the 2019 Rule, USCIS is the sole arbiter of how best an individual may prove their income, and submission of Revised Form-912 is a binding requirement for receipt of a fee waiver.

2. The 2019 Rule is not a general statement of policy, or a rule of agency organization, procedure, or practice

122. Nor is the 2019 Rule a general statement of policy, or rule of agency organization, procedure, or practice. APA rulemaking was thus required.

123. "[A] critical test of whether a rule is a general statement of policy is its practical effect in a subsequent administrative proceeding: a general statement of policy ... does not establish a binding norm .... it leaves the administrator free to exercise his informed discretion." *Greenwald v. Olsen*, 583 F. Supp. 1002, 1006 (D. Mass. 1984). In contrast, substantive rules are "binding norms intended to have the force of law, restraining the discretion of officials." *Caribbean Produce Exch., Inc. v. Sec'y of Health & Human Servs.*, 893 F.2d 3, 7 (1st Cir. 1989); *see also Better Gov't Ass'n v. Department of State*, No. 83-2998, 1987 WL 8528, *2 (D.D.C. Mar. 9, 1987) (concluding that the Department of Justice needed to go through the APA rulemaking procedure when implementing binding changes to FOIA fee waiver regulations).

124. The 2019 Rule removes discretion from USCIS officers' evaluations of fee waiver requests. USCIS has explained that "USCIS is abrogating the means[-]tested benefit prong for fee waiver eligibility" (Ex. F at 2), and that evidence of means-tested benefits will no longer be

"acceptable" (84 Fed. Reg. at 13687; 83 Fed. Reg. at 49121). At most, as USCIS says, Officers have the ability to "evaluate all ... evidence *supplied in support* of a fee waiver request." 84 Fed. Reg. at 13688 (emphasis added); 83 Fed. Reg. at 49121 (emphasis added). By the terms of the Revised Form I-912 itself, Applicants can no longer provide evidence of means-tested benefits in support of a fee waiver request, so there is no opportunity for officers to exercise discretion over such evidence.

E. Defendants Did Not Comply with the APA's Notice-and-Comment Rulemaking Procedures

125. By their own admission, Defendants did not even attempt to comply with the APA's notice-and-comment rulemaking procedures.

126. Defendants failed to comply with the APA and acted arbitrarily and capriciously in promulgating the 2019 Rule, because, despite the fact that thousands of comments were submitted in response to the Notices, Defendants' response to those comments was wholly deficient.

127. All of the justifications Defendants provided for the 2019 Rule demonstrate clear error of judgment and failure to consider aspects of the problem raised in comments by Project Citizenship and other similarly situated groups. Additionally, and relatedly, the 2019 Rule runs counter to the evidence presented in the comments.

128. In support of the 2019 Rule, USCIS has stated that the 2019 Rule seeks to "streamline[] and expedite[] USCIS's review, approval, or denial of the fee waiver request." 83 Fed. Reg. at 49,121. Defendants have argued that fee waivers based on a means-tested benefit run contrary to this goal because "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." 84 Fed. Reg. at 26,139. Additionally, USCIS has reasoned that eliminating means-tested benefits will alleviate the "burden" placed on non-fee-waiving Applicants by fee waivers and "reduce annual forgone revenue from fee waivers." *Id.*

129. None of these justifications adequately or substantively considers or respond to comments submitted by Project Citizenship and other similarly situated organizations that the 2019 Rule will have a devastating effect on naturalization-focused non-profit organizations and the low-income immigrants they serve.

130. In particular, Defendants failed to substantively respond to four contentions made in comments submitted by Project Citizenship and similarly situated organizations: (i) Defendants'

assertion that "inconsistencies" among state grants of means-tested benefits has a harmful effect on USCIS's ability to fairly adjudicate fee waiver requests is completely unsupported by evidence or data analysis; (ii) Applicants will be significantly burdened by the need to obtain an IRS transcript; (iii) Applicants will be significantly burdened by the need to prove income for each household member, and to file Revised Form I-912; and (iv) USCIS will be significantly burdened by the influx of paperwork required alongside submission of Revised Form I-912.

131. First, Defendants' justifications do not provide any specific data or analysis to support the agency's assertion that its decision to eliminate means-tested benefit evidence as a basis for a fee waiver was prompted by "inconsistencies" in the assessment of Applicants' ability to pay. Ex. G at 1-3, 6. Notably, Defendants do not indicate any harm resulting from this alleged inconsistency. Nor do Defendants address the fact that any inconsistency may reflect cost-of-living variations across states that are not reflected in the Federal Poverty Guidelines. A household of three is capped under the 2018 Federal Poverty Guidelines at $31,170 per year for an income-based fee waiver, regardless of the cost of living in the urban or rural setting.

132. Most significantly, for many of the most common benefits (including SNAP and TANF), even states with the least stringent income tests set the maximum qualifying income level at less than 150% of the federal poverty level. Therefore, Applicants receiving those benefits necessarily already have demonstrated low income satisfying the standard that USCIS imposes for income-based fee waivers. Accordingly, not crediting proof of a means-tested benefit in these cases achieves nothing other than additional work for the Applicant, Project Citizenship (and other service organizations like it), and USCIS.

133. Second, regarding the burden imposed on Applicants to obtain a tax transcript from the IRS, Defendants simply state that tax transcripts "are easily requested." In Project Citizenship's experience, this is not true for the population that Project Citizenship serves. For example, tax transcripts can only be sent to the address of record for the Applicant. Therefore, if an Applicant has recently moved or has moved since their last tax return, the process for requesting an IRS transcript is not simple. Moreover, even a straightforward application for a tax transcript will cause a 10- to 14-day delay.

134. Third, USCIS's Responses significantly underestimate the burden the 2019 Rule will place on Applicants because of the need to prove income for each household member. The September Response states that "the burden may increase for households with several members,"

but that "over 90 percent of Form I-912 filings were filed for one person and less than 10 percent were for multiple members of the same household." This reinforces precisely the additional burden Project Citizenship anticipates. Assuming, as Defendants claim, that 90% of fee waiver applications are for individuals, USCIS will see a dramatic increase in the amount of information provided in fee waiver applications. Applicants who previously would have submitted an individual application with evidence of their means-tested benefits will now need to provide proof of income for themselves *and* every household member. That is a prospective increase in the volume of information from 90% of fee waiver Applicants.

135. Fourth, the Responses do not address concerns raised by comments that all of the above will impose significant additional burdens on USCIS and the IRS, and thus directly undermine one of the purported goals of the change. The Notices provide no estimate of the time burden to USCIS, which will be significant. Income-based, case-by-case assessment of additional income information for every fee waiver application will be much costlier and more time-consuming than reviewing a streamlined means-tested benefit-based fee waiver application. USCIS will need to evaluate more voluminous supporting documentation (tax transcripts, paystubs, statements of benefits, etc.) on every single fee waiver application to assess eligibility, and reject incomplete submissions, only to revisit them again later if supplemental documentation is submitted.

136. In general, Defendants demonstrated a refusal to consider comments or adjust the 2019 Rule to account for the evidence presented by Project Citizenship and others. For example, Defendants did not respond in any way to Project Citizenship's suggestion, provided in its official comments to the 2019 Rule, that – as a compromise – USCIS could continue to accept evidence of means-tested benefits for *certain benefits* when those means-tested benefits require income below the Federal Poverty Guidelines. Defendants' closed-minded and rigid approach to promulgation of the 2019 Rule clearly did not satisfy the APA's notice-and-comment rulemaking procedures.

F. The 2019 Rule failed to comply with the PRA

137. As discussed above (*supra* ¶¶ 109–124), Defendants should have engaged in APA rulemaking for the 2019 Rule instead of merely purporting to follow the PRA's information collection procedures. The APA applies to rulemaking, while the PRA applies to paperwork

reduction when an agency is engaged in information gathering. They are not mutually exclusive requirements, and the PRA does not provide an alternative to the more burdensome APA.

138. Wholly apart from the 2019 Rule's violation of the APA, it also separately violates the PRA. The rule was not fashioned to minimize burdens on the Applicants as required. To the contrary, it necessarily creates *more* paperwork for Applicants by requiring them to go through the burdensome process of obtaining tax transcripts and gathering income-verification documentation they would otherwise not have to gather.

139. Defendants did not undertake the required PRA procedures, specifically regarding Defendants' responsibility to fully evaluate the 2019 Rule considering comments provided by Project Citizenship and other stakeholders, and to ensure the 2019 Rule was the "least burdensome" possible alternative.

140. The PRA notices, for example, did not provide any information or data to support or explain the assertion that that "USCIS 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," and that "[t]herefore, the revised form will not permit a fee waiver based on receipt of a means-tested benefit, but will retain the poverty guideline threshold and financial hardship criteria." 83 Fed. Reg. at 49,121.

141. Similarly, the PRA notices did not provide any information or data to support or explain the assertions that "USCIS has determined that without changes to fee waiver policy it will continue to forgo increasing amounts of revenue as more fees are waived. As a result, USCIS expects that DHS will be required to increase the fees that it charges for benefit requests for which fees are not waived. . . . In addition to curtailing the rising costs of fee waivers, this proposed policy change is intended to introduce more consistent criteria for approving all fee waivers. USCIS 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." 84 Fed. Reg. at 26,139.

142. The deficiencies within the PRA notices indicate a clear failure of critical reasoning; Defendants did not adequately state a basis for the implementation of the 2019 Rule. Because of this foundational failure, Defendants cannot be said to have acted reasonably in determining that the 2019 Rule was viable, let alone "the least burdensome necessary for the proper performance of the agency's functions." 5 C.F.R. § 1320.5(d)(1).

V. PLAINTIFF IS HARMED BY DEFENDANTS' 2019 RULE

143. Plaintiff Project Citizenship provides legal programs to assist low-income immigrants who are eligible to naturalize or to receive a Certificate of Citizenship and would not otherwise be able to afford an attorney to guide them through the complicated process. For years, Plaintiff has designed and administered programs to assist Applicants to complete fee waiver paperwork along with their applications – complex tasks for which legal assistance is often required. The 2019 Rule will significantly impair Project Citizenship's ability to achieve its mission and require diversion of resources.

A. Naturalization Workshops

144. The majority of naturalization applications that Plaintiff assists in submitting are generated through naturalization workshops it hosts. Project Citizenship has used such workshops to help more than 7,000 individuals file citizenship applications. In 2018 alone, Project Citizenship hosted 72 workshops. Workshops are staffed by a combination of staff (including attorneys), Department of Justice-accredited representatives, volunteer attorneys from a network of law firms, legal assistants, interpreters, and other volunteers.

145. These workshops are highly organized, group processing events that serve as a one-stop shop for completing and submitting applications for eligible LPRs and Derivative Applicants. Participants are asked to bring all documentation required to complete their naturalization application, including documentation – typically a letter proving receipt of a means-tested benefit – supporting a fee waiver, if one is needed. In this way, workshop volunteers are able to quickly and fully assist Applicants with little oversight.

146. Many of the individuals who come to Project Citizenship's workshops are elderly, have limited English proficiency, or live in rural areas with limited access to legal services.

147. Despite these barriers, naturalization workshops are incredibly successful at generating completed naturalization applications. At the end of most workshops, for instance, Project Citizenship has completed, ready-to-mail applications for about 57% of Applicants, and another 29% of Applicants are able to complete an application with minimal follow-up.

148. Roughly 71% of the applications submitted through Plaintiff's naturalization workshops include a fee waiver. Of those, about 93% are based on receipt of a means-tested benefit.

149. In Plaintiff's experience, fee waiver applications based on receipt of means-tested benefits are the least subjective, most straightforward, and most frequently granted means of proving one's qualification for a waiver (*i.e.*, inability to pay). In a workshop setting, means-tested benefit-based fee waiver applications take just minutes to complete. At workshops, for example, Project Citizenship is able to quickly obtain proof of the means-tested benefit by using a phone application created by the Massachusetts Department of Transitional Assistance or with a signed release from the Massachusetts Executive Office of Health and Human Services documenting an individual's enrollment in MassHealth, the Massachusetts Medicaid program.

B. Effective Naturalization Workshops are Not Possible with the 2019 Rule

150. Naturalization workshop participants who need a fee waiver but cannot use a means-tested benefit verification letter to prove eligibility are generally unable to complete their applications at a naturalization workshop, because the other methods for proving eligibility require working closely with an advocate to ensure that sufficient evidence has been collected and properly compiled.

151. Because of the onerous nature of collecting the required information associated with income- or hardship-based fee waivers, Project Citizenship does not have capacity to provide the detailed follow-up that almost 75% of its clients will require if USCIS eliminates means-tested fee waivers. As mentioned above, workshops rely heavily on volunteer labor. Plaintiff's network of approximately 1,000 workshop volunteers is not trained to assist participants in complying with complex evidentiary requirements for income- or hardship-based fee waiver applications.

152. Project Citizenship will, therefore, inevitably see a reduction in the number of immigrants it is able to assist in naturalizing if the 2019 Rule goes into effect.

153. The 2019 Rule makes naturalization workshops exceedingly difficult to administer. For example, if clients cannot use a simple and easily accessible means-tested benefit verification letter to prove eligibility for a waiver, additional time will be spent explaining the required documentation, helping the client gather that documentation (which inevitably takes several meetings), carefully checking all calculations, determining whether there are additional ways to explain the client's income, and writing a detailed cover letter to clearly explain the basis of the client's eligibility for a fee waiver. This process has to be replicated for each adult family member contributing to an Applicant's household.

154. The difficulty of completing these additional steps is further exacerbated when assistance is needed in a language other than English, which is the case for approximately 22% of Project Citizenship's clients. Interpretation is especially important in this context, because there is no appeal from the denial of a fee waiver. Policy Manual: Chapter 4 - Fee Waivers, USCIS (effective Dec. 2, 2019), https://www.uscis.gov/policy-manual/volume-1-part-b-chapter-4.

155. The tax transcript requirement alone will cause a significant drain on Plaintiff's resources. In order to continue serving clients who need fee waivers, Plaintiff will have to directly assist clients with obtaining their tax transcripts during naturalization workshops and train others to do so. To request a tax transcript online, clients need to gather certain financial information, open an email account, and compile other documentation. Many of Plaintiff's clients lack all of the required financial products they must have in order to make an online request. Assisting with these obstacles will be an onerous, and sometimes impossible, task for Project Citizenship.

156. As a consequence of the increased amount of time and effort required to complete a single fee waiver application, as well as the increased drain on Plaintiff's resources as a result of the 2019 Rule, the feasibility of Plaintiff's naturalization application workshops will evaporate, and the number of naturalization applications Plaintiff is able to complete will drastically decrease. Plaintiff will be forced to divert extensive staff time and resources to creating new educational and training materials; re-training staff, volunteers, and immigrant communities about the new changes; translating materials into other languages; and, most notably, attempting to design a new service model to accommodate more naturalization applications that will undoubtedly be longer, more complex, and less uniform.

C. The 2019 Rule Will Make it Impossible for Plaintiff to Employ Naturalization Workshops, Draining its Resources

157. The 2019 Rule's effect on the naturalization workshop model has myriad negative effects on Plaintiff, which depends on workshops as its core service model.

1. The 2019 Rule will fundamentally undermine Plaintiff's mission.

158. First, Project Citizenship is harmed because the sheer number of clients it can serve will plummet under the 2019 Rule. This will fundamentally undermine, and potentially outright defeat, Plaintiff's mission of providing access to legal services for people who cannot afford to hire individual private attorneys to guide them through the complex and legally fraught process of naturalization.

159. The changes to the fee waiver form significantly increase the time and resources necessary to complete a single naturalization application with a fee waiver. It takes workshop service providers just minutes – and certainly under an hour – to prepare a fee waiver application based on a client's receipt of public benefits. In contrast, fee waiver applications based on income or hardship can take upwards of two hours to complete, and many take much longer, particularly if USCIS rejects an initial request, which must then be started anew and resubmitted. Additionally, in Project Citizenship's extensive experience, approximately a quarter of all fee waiver applications that are based on income are initially rejected and require resubmission, resulting in a further increase in requisite time and resources.

160. The difference is substantial as a practical matter. In 2017, Project Citizenship submitted 1,118 fee waiver applications for its clients through the help of its volunteer network, approximately 1,040 of which were based on receipt of a means-tested benefit. Under the 2019 Rule, all of these fee waiver applications will become income-based. Income-based fee waiver applications take at least .25 hours to fill out plus one to two hours to collect the underlying documentation. An income-based fee waiver application can, therefore, take approximately four hours to prepare for initial submission with an additional two to three hours if the application must be resubmitted, which, in Plaintiff's experience, happens about 25% of the time. In total, completing income-based fee waivers for all clients in need of a fee waiver will place an estimated additional 3,360 hours or more per year burden on Project Citizenship. This substantial increase in time incurred to assist Applicants will necessarily result in fewer clients that can be served by Project Citizenship and its limited staff and resources.

161. No (or greatly reduced) naturalization workshops, and more time per client, mean fewer clients served overall.[4]

2. The 2019 Rule jeopardizes Plaintiff's funding.

162. Second, Project Citizenship is harmed because the 2019 Rule will immediately jeopardize its funding.

[4] This is confirmed by recent research on the impact of the introduction of the Form I-912 and associated policy changes to the fee waiver program, which increased the number of naturalization applications filed each year by about ten percent. *See Lifting Barriers to Citizenship*, Immigration Policy Lab, https://immigrationlab.org/project/lifting-barriers-to-citizenship/ (last visited Nov. 6, 2019).

163. Project Citizenship is funded through a combination of foundation grants, corporate sponsorship, and individual donors. Grant proposals submitted for funding have predicted outcomes of at least 1,500 citizenship applications per year based on patterns of productivity over the past several years.

164. Thus, Project Citizenship's model is based upon serving a high volume of Applicants, and Project Citizenship's ability to reach its current fundraising targets will be jeopardized if the volume of applications it submits plummets.

165. Increased difficulty obtaining a fee waiver for clients will increase Project Citizenship's work without increasing the number of Applicants. Although the number of immigrants interested in citizenship is likely to stay consistent or grow, the number of Applicants able to mail their applications with the fee or fee waiver is likely to be greatly diminished.

166. Decreased number of applications may result in less funding, a reduction in general operating revenue impacting the number of staff members. Project Citizenship will face the difficulty of having to justify its current budget to its financial supporters while only servicing a fraction of the clients it has historically assisted. Additionally, due to the increased burden on Applicants under the 2019 Rule, Project Citizenship will have to divert resources by adjusting staffing, providing significant additional training to volunteers, or providing fewer services to its client population, frustrating its mission to increase naturalization.

3. The 2019 Rule will force Plaintiff to expend significant resources reorganizing and retraining.

167. Third, Plaintiff is harmed because it will be forced to spend valuable staff time and organizational resources re-tooling, editing, and updating materials; creating new materials and resources; re-training hundreds of service providers and thousands of volunteers on the new requirements and how to meet them; and responding to an anticipated significant increase in requests for legal advice and assistance. As a result of the 2019 Rule, Plaintiff will suffer a massive reallocation of resources, in the immediate term. None of it would be necessary absent the 2019 Rule. It is an extreme burden on the time, resources, and capacity of Project Citizenship, all of which would otherwise be devoted to fulfilling its missions through direct client services, programming, teaching, training and technical assistance, and research.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Defendants Failed to Comply with Procedures Required by the Administrative Procedures Act)

168. Plaintiff repeats and incorporates by reference the preceding allegations.

169. USCIS is subject to the APA. *See* 5 U.S.C. §§ 551, 553, 703.

170. The APA was "adopted to provide, inter alia, that administrative policies affecting individual rights and obligations be promulgated pursuant to certain stated procedures so as to avoid the inherently arbitrary nature of unpublished ad hoc determinations." *Morton v. Ruiz*, 415 U.S. 199, 232 (1974). Indeed,

> [The] agency power to make rules that affect substantial individual rights and obligations carries with it the responsibility not only to remain consistent with the governing legislation, but also to employ procedures that conform to the law. No matter how rational ... a particular decision might be, the determination of eligibility cannot be made on an ad hoc basis by the dispenser of the funds.

Id. (internal citations omitted). All rules that are "substantive" and affect "individual rights and obligations"— that is, regulations that are "binding . . . [on] the agency and regulated parties, [and] also on the courts," *Warder*, 149 F.3d at 82 – must go through APA notice-and-comment rulemaking. *See Chrysler Corp.*, 441 U.S. at 302.

171. Notice-and-comment rulemaking procedures under the APA require (1) that "[g]eneral notice of proposed rulemaking shall be published in the Federal Register," 5 U.S.C. § 553(b); (2) that "the agency ... give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments[,]" *id.* at § 553(c); (3) that the agency "consider and respond to significant comments received during the period for public comment," *Perez*, 135 S. Ct. at 1203; and, (4) that the final published rule include "a concise general statement of the [rule's] basis and purpose." 5 U.S.C. § 553(c).

172. Following the submission of comments, the agency must then respond to those comments. "In order for an agency decision to pass muster under the APA[] … the decision [must be] 'rational' [and] 'make[] … sense.'" *Penobscot Air Servs., Ltd. v. F.A.A.*, 164 F.3d 713, 720 (1st Cir. 1999) (internal citations omitted). "The requirement that agency action not be arbitrary or capricious includes a requirement that the agency adequately explain its result . . . and 'respond

to 'relevant' and 'significant' public comments.'" *Id.* at 719 n.3 (internal citations omitted). Therefore, "agency decisions [must be] founded on reasoned evaluation of the relevant factors." *Id.* at 720. In the rulemaking process, an agency official cannot "shut his mind to other ideas" and must "remain[] open to persuasion." *S. Terminal Corp. v. E.P.A.*, 504 F.2d 646, 675 (1st Cir. 1974).

173. The 2019 Rule is substantive and affects individual rights and obligations.

174. Defendants admit that "PRA notices do not rise to the level of notice and comment rulemaking." Ex. F at 3.

175. Defendants did not undertake APA-compliant notice-and-comment rulemaking prior to issuing the 2019 Rule.

176. Defendants did not prepare an initial regulatory flexibility analysis.

177. Accordingly, the 2019 Rule was issued "without observance of procedure required by law" and is invalid under 5 U.S.C. § 706(2)(D).

SECOND CAUSE OF ACTION

(The 2019 Rule is Substantively Arbitrary and Capricious and Otherwise Not in Accordance with the Law in Violation of the Administrative Procedure Act)

178. Plaintiff repeats and incorporates by reference the preceding allegations of this Complaint.

179. The 2019 Rule is a final agency action subject to judicial review because it "marks the consummation of the agency's decisionmaking process" and is "one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow.'" *Bennett v. Spear*, 520 U.S. 154, 156, 178 (1997) (quoting *Port of Bos. Terminal Ass'n v. Rederiaktiebolaget Transatlantic*, 400 U.S. 62, 71 (1970)).

180. An agency action is arbitrary and capricious where an agency failed to "give adequate reasons for its decisions," "explain the evidence which is available," "examine the relevant data," or offer a "rational connection between the facts found and the choice made." *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43, 52 (1983).

181. The 2019 Rule is arbitrary and capricious and violates the APA for several reasons.

182. Defendants have failed to "cogently explain why [they have] exercised [their] discretion in a given manner." *State Farm*, 463 U.S. at 48–49. Specifically, the purported rationale for the 2019 Rule is not supported by any evidence.

183. Defendants assert, as a basis for the 2019 Rule, that permitting fee waivers based on the receipt of a means-tested benefit leads to inconsistent results because of "the various income levels used by states to grant a means-tested benefit." 84 Fed. Reg. at 26139; 84 Fed. Reg. at 13,687; 83 Fed. Reg. at 49,121. But Defendants provided no documentation, data, or analysis to support this assertion.

184. Defendants failed to provide any data to indicate that there are Applicants who receive means-tested benefits who are able to pay the application fee.

185. Defendants failed to take into account factors such as cost of living that could inform differing qualifying income levels for means-tested benefits, as well as actual ability to pay.

186. Defendants did not explain why the revised standard – to require proof of income at or below 150% of the Federal Poverty Guidelines for fee waiver eligibility – is a fair or adequate measure of an Applicant's "inability to pay." 8 C.F.R. § 103.7(c)(2).

187. In fact, the pretextual goal of eliminating inconsistency will actually have the opposite effect. Requiring proof of income below 150 percent of the Federal Poverty Guidelines, as opposed to allowing Applicants to demonstrate receipt of a means-tested benefit, creates inconsistency given the variable cost of living across the country.

188. Defendants assert that the proposed changes will ease the burden on fee-paying Applicants, who are responsible for the cost of fee-waived applications. Defendants claim that the use of consistent standards to determine fee waiver eligibility will "increase the consistency in the shifting of the cost of fee waivers to those who pay fees." Ex. F at 3. But Defendants have provided no data or evidence to support this assertion, nor did they take into consideration the increased burden that will be placed on other Applicants, legal-service providers, city and regional governments, the IRS, and even the agency itself. Moreover, this justification is untethered to the regulation under which it was promulgated, which provides that the standard for fee waivers is the Applicant's "inability to pay."

189. As such, Defendants failed to establish a nexus between the alleged problem – inconsistencies in the use of means-tested benefits to prove fee waiver eligibility – and the 2019 Rule.

190. Defendants' stated rationale is an unsubstantiated and pretextual justification that conceals the agency's true purpose, which is to limit access to naturalization and thereby deprive those eligible for naturalization of political rights, including the right to vote.

191. The proposed revisions also require Applicants to procure new documents, including federal tax transcripts, to prove income. Defendants have failed to provide a rationale for the rejection of tax returns as proof of income.

192. Defendants provided no explanation for why a tax transcript is preferred over a tax return, nor did they identify any change in facts or circumstances that justify this new requirement or recognize the significant burden it places on Applicants and service providers.

193. The 2019 Rule is not in accordance with the law because its bar on applicant-generated fee waiver requests is contrary to (i) the plain language of 8 C.F.R. § 103.7(c)(2) and (ii) the agency's intent with respect to 8 C.F.R. § 103.7(c)(2).

194. 8 C.F.R. § 103.7(c)(2) is unambiguous. It plainly states: "a person requesting an immigration benefit [through a fee waiver] must submit *a written request*." 8 C.F.R. § 103.7(c)(2) (emphasis added). The regulation does not contemplate, let alone require, that Applicants seeking a fee waiver do so through the use of a government-generated form.

195. Defendants' 2019 Rule contradicts the plain language of 8 C.F.R. § 103.7(c)(2), which simply requires that fee waiver requests be submitted in writing.

196. Defendants' bar on applicant-generated fee waiver requests contradicts the agency's prior stated intent: In its 2011 Policy Memorandum, Defendants determined that since "use of a USCIS-published fee-waiver request form is not mandated by regulation, USCIS will continue to consider applicant-generated fee-waiver requests (*i.e.*, those not submitted on Form I-912 that comply with 8 C.F.R. § 103.7(c))." U.S. Citizenship and Immigration Servs., Policy Memorandum 2 (Mar. 13, 2011).

197. Accordingly, the revisions to the Form I-912 by the 2019 Rule are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and are invalid under 5 U.S.C. § 706(2)(A).

THIRD CAUSE OF ACTION

(The 2019 Rule is Substantively Arbitrary and Capricious and Otherwise Not in Accordance with the Law in Violation of the Paperwork Reduction Act)

198. Plaintiff repeats and incorporates by reference the preceding allegations in this Complaint.

199. The APA empowers this Court to "hold unlawful and set aside" agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. § 706(2)(A), or taken "without observance of procedure required by law," *id.* § 706(2)(D).

200. Rather than promulgating a rule change, USCIS purported to adopt the Revised Form I-912 and instructions under the PRA, a statutory scheme that provides for Office of Management and Budget ("OMB") approval of agency-required collections of information. 44 U.S.C. §§ 3501, 3516

201. USCIS published three information-collection notices in the Federal Register. In its first and second notices, USCIS stated that (1) not requiring fee waivers based on the receipt of a means-tested benefit would reduce the evidence required for Form I-912 and (2) "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." 83 Fed. Reg. at 49,121; 84 Fed. Reg. at 13,687. In its third notice, USCIS stated that the purposes of its proposed changes include limiting the number of fees waived and introducing more consistent criteria for approving fee waivers. 84 Fed. Reg. at 26,139.

202. However, the notices did not include any data or analysis to support these assertions, did not describe the other proposed changes to Form I-912, and did not discuss alternative ways to address the purported concerns it raised.

203. USCIS did not comply with the PRA requirement that, before revising its fee waiver information collection, it first complete a multi-factor review that includes an "objectively supported estimate of burden," 5 C.F.R. § 1320.8(a)(4); "[a] plan for the efficient and effective management and use of the information to be collected, including necessary resources[,]" *id.* § 1320.8(a)(7); and other elements, *id.* § 1320.8(a). *See generally id.* § 1320.5(a)(1)(i).

204. Because they were inaccurate and incomplete, the USCIS's Federal Register notices did not satisfy the PRA requirement for USCIS to publish two Federal Register notices

before revising its fee-waiver information-collection. *See* 44 U.S.C. §§ 3506(c)(2)(A), 3507(a)(1)(D); 5 C.F.R. §§ 1320.5(a)(1)(iv), 1320.8(d)(1), 1320.10(a).

205. USCIS further did not comply with the PRA requirement that, to obtain OMB approval for the October 2019 revisions to its fee-waiver information collection, it "demonstrate that it has taken every reasonable step to ensure that the proposed collection of information" "[i]s the least burdensome necessary[,]" "[h]as practical utility[,]" has not "shift[ed] disproportionate costs or burdens onto the public" in "seek[ing] to minimize the cost to [USCIS,]" and meets other standards, 5 C.F.R. § 1320.5(d)(1), as well as demonstrate in its OMB submission that certain characteristics of the collection, if present, satisfy a "substantial need" or a statutory requirement, *id.* § 1320.5(d)(2).

206. Finally, USCIS failed to satisfy the PRA requirement that it provide a certification, supported by the record, that its fee-waiver information-collection, as revised, satisfies certain requirements. *See* 5 C.F.R. § 1320.9; *see also* 44 U.S.C. § 3506(c)(3); 5 C.F.R. § 1320.5(a)(1)(iii)(A).

207. Thus, in adopting the October 2019 revisions to its fee-waiver information-collection, Defendants failed to observe procedures required by law, or took agency action that was arbitrary, capricious, an abuse of discretion, or not in accordance with the PRA, in contravention of the APA.

REQUEST FOR RELIEF

For the foregoing reasons, Plaintiff requests that the Court:

a) Declare that the 2019 Rule is unlawful;

b) Vacate the 2019 Rule;

c) Enjoin Defendants from enforcing or applying any aspect of the 2019 Rule;

d) Grant Plaintiff its costs in this action, including reasonable attorneys' fees incurred; and

e) Award other relief that the Court deems just and proper.

Dated: November 15, 2019

Ropes & Gray LLP

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EXHIBIT A

Federal Register

Friday,
June 11, 2010

Part IV

Department of Homeland Security

8 CFR Parts 103, 204, 244, et al.
U.S. Citizenship and Immigration Services Fee Schedule; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 204, 244, and 274A

[CIS No. 2490–09; DHS Docket No. USCIS–2009–0033]

RIN 1615–AB80

U.S. Citizenship and Immigration Services Fee Schedule

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Proposed rule.

SUMMARY: The Department of Homeland Security (DHS) proposes to adjust certain immigration and naturalization benefit fees charged by U.S. Citizenship and Immigration Services (USCIS). USCIS conducted a comprehensive fee study and refined its cost accounting process, and determined that current fees do not recover the full costs of services provided. Adjustment to the fee schedule is necessary to fully recover costs and maintain adequate service. DHS proposes to increase USCIS fees by a weighted average of 10 percent. DHS proposes among other amendments to add three new fees to cover USCIS costs related to processing the following requests: Regional center designation under the Immigrant Investor Pilot Program; Civil surgeon designation; and Immigrant visas.

DATES: Written comments must be submitted on or before July 26, 2010.

ADDRESSES: Comments, identified by DHS Docket No. USCIS–2009–0033, should be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Room 3008, Washington, DC 20529–2210. To ensure proper handling, please reference DHS Docket No. USCIS–2009–0033 on the correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions.
- *Hand Delivery/Courier:* Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Room 3008, Washington, DC 20529–2210. Contact Telephone Number (202) 272–8377.

FOR FURTHER INFORMATION CONTACT: Timothy Rosado, Chief, Budget Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., Washington, DC 20529–2130, telephone (202) 272–1930.

SUPPLEMENTARY INFORMATION:

Table of Contents

List of Acronyms and Abbreviations

ABC—Activity-Based Costing.
AAO—Administrative Appeals Office.
AOP—Annual Operating Plan.
ASC—Application Support Centers.
BLS—Bureau of Labor Statistics.
CFO—Chief Financial Officer.
CLAIMS—Computer Linked Application Information System.
CNMI—Commonwealth of Northern Mariana Islands.
CPI–U—Consumer Price Index—Urban Consumers.
CHEP—Cuban Haitian Entrant Program.
CBP—U.S. Customs and Border Protection.
DED—Deferred Enforced Departure.
DOD—Department of Defense.
DHS—Department of Homeland Security.
DOL—Department of Labor.
DOS—Department of State.
DNB—Dun and Bradstreet.
EAD—Employment Authorization Document.
FASAB—Federal Accounting Standards Advisory Board.
FBI—Federal Bureau of Investigation.
FSM—Federated States of Micronesia.
FY—Fiscal Year.
FDNS—Fraud Detection and National Security.
FTE—Full-Time Equivalents.
GAO—Government Accountability Office.
IV—Immigrant Visa.
IEFA—Immigration Examinations Fee Account.
IT—Information Technology.
IBIS—Interagency Border Inspection System.
IO—International Operations.
NARA—National Archives and Records Administration.
OIS—Office of Immigration Statistics.
OIT—Office of Information Technology.
OMB—Office of Management and Budget.
PAS—Performance Analysis System.
PMB—Production Management Branch.
PPA—Program Project Activity Structure.
RAIO—Refugee, Asylum, and International Operations.
RFA—Regulatory Flexibility Act.
RMI—Republic of the Marshall Islands.
SLAs—Service Level Agreements.
SAM—Staffing Allocation Model.
SQA—System Qualified Adjudication.
SAVE—Systematic Alien Verification for Entitlements.
TPS—Temporary Protected Status.
TPO—Transformation Program Office.
TTPI—Trust Territory of the Pacific Islands.
USCIS—U.S. Citizenship and Immigration Services.
UMRA—Unfunded Mandates Reform Act.
USPHS—United States Public Health Service.
VPC—Volume Projection Committee.

I. Public Participation

DHS invites interested persons to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. Comments that will provide the most assistance to DHS will reference a specific portion of the proposed rule, explain the reason for

any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and DHS Docket No. USCIS–2009–0033. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Anonymous comments should be submitted to *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

The docket includes additional documents that support the analysis contained in this rule to determine the specific fees that are proposed. These documents include:

- FY 2010/2011 Fee Review Supporting Documentation; and
- Small Entity Analysis for Adjustment of the U.S. Citizenship and Immigration Services Fee Schedule.

These documents may be reviewed on the electronic docket. The software used in computing the immigration benefit request and biometric fees is a commercial product licensed to USCIS that may be accessed on-site by appointment by calling (202) 272–1930.

II. Legal Authority and Guidance

The Immigration and Nationality Act of 1952 (INA), as amended, provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including services provided without charge to asylum applicants and certain other immigrant applicants. INA section 286(m), 8 U.S.C. 1356(m).[1] The INA provides that the fees may recover administrative costs as well. The fee revenue collected under section 286(m) of the INA remains available to DHS to provide immigration and naturalization benefits and ensures the collection, safeguarding, and accounting of fees by USCIS. INA section 286(n), 8 U.S.C. 1356(n).

INA section 286(m), 8 U.S.C. 1356(m), contains both silence and ambiguity under *Chevron USA, Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984). Congress has not spoken directly, for example, to a number of issues present in this section, including the scope of application of the section or subsidizing operations from other fees.[2] Congress has provided that USCIS recover costs "including the costs of similar services" provided to "asylum applicants and other immigrants." Congress has not detailed the determination of what costs are to be included. Moreover, "other immigrants" has a broad meaning under the INA because the term "immigrant" is defined by exclusion to mean "every alien except an alien who is within one of the following classes of nonimmigrant aliens." INA section 101(a)(15), 8 U.S.C. 1101(a)(15). The extensive listing of exclusions from "immigrant" by the non-immigrant visa classes is replete with ambiguity evidenced by the detailed and complex regulations and judicial interpretations of those provisions.

Additionally, Congress provides appropriations for specific USCIS programs. Appropriated funding for FY 2010 included asylum and refugee operations (4th Quarter contingency funding), and military naturalization surcharge costs ($55 million); E-Verify ($137 million); immigrant integration ($11 million); REAL ID Act implementation ($10 million); and data center consolidation ($11 million). Department of Homeland Security Appropriations Act, 2010, Public Law 111–83, title IV, 123 Stat. 2142, 2164—5 (Oct. 28, 2009) (DHS Appropriation Act 2010). Providing these limited funds against the backdrop of the broad immigration examinations fee statute—together forming the totality of funding available for USCIS operations—requires that all other costs relating to USCIS and adjudication operations are funded from fees.

When no appropriations are received, or fees are statutorily set at a level that does not recover costs, or DHS determines that a type of application should be exempt from payment of fees, USCIS must use funds derived from other fee applications to fund overall requirements and general operations. For example, when a fee such as Temporary Protected Status (TPS), set by statute at $50, does not cover the cost of adjudicating the TPS application, the excess cost must be recovered by fees charged to other applications. INA section 244(c)(1)(B), 8 U.S.C. 1254a(c)(1)(B). Furthermore, when a policy decision is made by regulations, for example, to exempt aliens who are victims of a severe form of trafficking in persons and who assist law enforcement in the investigation or prosecution of the acts of trafficking (T Visa), and aliens who are victims of certain crimes and are being helpful to the investigation or prosecution of those crimes (U Visa), from visa fees, the cost of processing those fee-exempt visas must be recovered by fees charged against other applications. INA sections 101(a)(15)(T), (U), 214(o), (p), 8 U.S.C. 1101(a)(15)(T), (U), and 1184(o), (p); 8 CFR 214.11, 214.14, 103.7(c)(5)(iii); *Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status*, 73 FR 75540 (Dec. 12, 2008).

The proposed rule follows initial steps taken by the Administration within enacted FY 2010 appropriations for USCIS fee reform that moved some asylum, refugee, and military naturalization costs out of the fee structure. The purpose of this fee reform is to improve the linkage between fees paid by USCIS applicants and petitioners and the cost of programs and activities to provide immigration benefits. Because of fee exemptions for beneficiaries of asylum, refugee, and military naturalization, fee surcharges were added to other applications and petitions. 72 FR 29859. Similarly, costs of SAVE and the Office of Citizenship are currently only partially supported by fee revenue. Additional fee reform in these areas moves these costs out of the USCIS fee structure and improves the transparency of USCIS fees. Nevertheless, while USCIS has calculated its fees as much as possible to bear a relationship with the effort expended to carry out the adjudication, fees are the prevalent source of USCIS funding.[3]

[1] INA section 286(m), 8 U.S.C. 1356(m), provides, in pertinent part:

Notwithstanding any other provisions of law, all adjudication fees as are designated by the [Secretary of Homeland Security] in regulations shall be deposited as offsetting receipts into a separate account entitled "Immigration Examinations Fee Account" in the Treasury of the United States, whether collected directly by the [Secretary] or through clerks of courts: *Provided, however*, * * *: *Provided further*, That fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected.

Paragraph (n) provides that deposited funds remain available until expended "for expenses in providing immigration adjudication and naturalization services and the collection, safeguarding and accounting for fees deposited in and funds reimbursed from the 'Immigration Examinations Fee Account'."

[2] Congress's intent in using individual terms, such as "full cost," is clear, although the totality of the section is ambiguous.

[3] INA section 286(m), 8 U.S.C. 1356(m), provides broader fee-setting authority and is an exception from the stricter costs-for-services-rendered requirements of the Independent Offices Appropriations Act, 1952, 31 U.S.C. 9701(c) (IOAA); see *Seafarers Intern. Union of North America* v. *U.S. Coast Guard,* 81 F.3d 179 (DC Cir. 1996) (IOAA provides that expenses incurred by agency to serve some independent public interest cannot be included in cost basis for a user fee,

Continued

DHS works with the Office of Management and Budget (OMB) and follows the guidance provided by OMB Circular A–25, establishing Federal policy guidance regarding fees assessed by Federal agencies for government services. OMB Circular A–25, *User Charges* (Revised), par. 6, 58 FR 38142 (July 15, 1993). Circular A–25 provides that:

> [i]t is the objective of the United States Government to:
>
> a. Ensure that each service, sale, or use of Government goods or resources provided by an agency to specific recipients be self-sustaining;
>
> b. Promote efficient allocation of the Nation's resources by establishing charges for special benefits provided to the recipient that are at least as great as costs to the Government of providing the special benefits; and
>
> c. Allow the private sector to compete with the Government without disadvantage in supplying comparable services, resources, or goods where appropriate.

Id, par. 5. In summary, one objective of Circular A–25 ensures that Federal agencies recover the full costs of providing specific services to users and associated costs. Full costs include, but are not limited to, an appropriate share of:

- Direct and indirect personnel costs, including salaries and fringe benefits such as medical insurance and retirement;
- Physical overhead, consulting, and other indirect costs, including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment;
- Management and supervisory costs; and
- The costs of enforcement, collection, research, establishment of standards, and regulation.

Id. par. 6d1. INA section 286(m), 8 U.S.C. 1356(m), provides DHS broader discretion to include other costs.

OMB Circular A–25 advises that fees should be set to recover these costs in their entirety. Full costs are determined based upon the best available records of the agency. *Id. See also* OMB Circular A–11, section 20.7(d), (g) (August 7, 2009, revised November 16, 2009) (FY 2011 budget formulation and execution policy regarding user fees), found at *http://www.whitehouse.gov/omb/assets/a11_current_year/a_11_2009.pdf.* DHS and OMB use OMB Circular A–25 as the overall policy guidance for determining the activity based costing that forms a base for the ultimate decisions on appropriate fee amounts, and, in conjunction with OMB Circular A–11, issued each budget cycle, determining appropriate requests for appropriations that may offset a portion of the totality of fee recovery.

OMB Circulars A–11 and A–25 provide internal Executive Branch direction for the development of appropriation requests and fee schedules (under the IOAA), but are adapted here to the activity based costing methodology that forms the nucleus for the proposed fee schedule. These internal directions remain at the discretion of the President and the Director of OMB. 5 CFR 1310.1.

DHS also conforms to the requirements of the Chief Financial Officers Act of 1990 (CFO Act), 31 U.S.C. 901–03, requiring that each agency's Chief Financial Officer (CFO) "review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value." *Id.* at 902(a)(8). This proposed rule reflects recommendations made by the DHS CFO and USCIS CFO.

When developing proposed fees, USCIS reviews, to the extent applicable, cost accounting concepts and standards recommended by the Federal Accounting Standards Advisory Board (FASAB). The FASAB defines "full cost" to include "direct and indirect costs that contribute to the output, regardless of funding sources." *FASAB, Statement of Financial Accounting Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government* 36 (July 31, 1995). To determine the full cost of a service or services, FASAB identifies various classifications of costs to be included and recommends various methods of cost assignment. *Id.* at 33–42. DHS proposes complete funding of existing services and specific allocation methods.

Accordingly, DHS applies the discretion provided in INA section 286(m), 8 U.S.C. 1356(m), to (1) develop activity based costing to establish basic fee setting parameters that are consistent to the extent practical with OMB Circular A–25, (2) applies administrative judgment to spread those overhead and other costs that are not driven by the cost of services, and (3) applies policy judgments to effectuate the overall Administration policy.[4] The "full" cost of operating USCIS, less any appropriated funding, has been the historical total basis for establishing the cost basis for the fees, and Congress has consistently recognized this concept on annual appropriations. This proposed rule reflects the authority granted to DHS by INA section 286(m) and other statutes.

III. The Immigration Examinations Fee Account

A. General Background

In 1988, Congress established the Immigration Examination Fee Account (IEFA). Public Law 100–459, section 209, 102 Stat. 2186 (Oct. 1, 1988), enacting, after correction, INA sections 286(m) and (n), 8 U.S.C. 1356(m) and (n). Fees deposited into the IEFA fund the provision of immigration and naturalization benefits and other benefits as directed by Congress. In subsequent legislation, Congress directed that the IEFA also fund the cost of asylum processing and other services provided to immigrants at no charge. Public Law 101–515, sec. 210(d)(1) and (2), 104 Stat. 2101, 2121 (Nov. 5, 1990). Consequently, the immigration benefit fees were increased to recover these additional costs. *See* 59 FR 30520 (June 14, 1994).

B. Fee Review History

USCIS conducted a comprehensive fee review in 2007 and promulgated a revised fee schedule that amended many of the fees charged by USCIS to more accurately reflect the costs of the services provided by USCIS. 72 FR 29851 (May 30, 2007) (final rule) (FY 2008/2009 Fee Rule).[5] The 2007 final rule was effective on July 30, 2007, covering FY 2008 and FY 2009. The documentation accompanying this rule in the rulemaking docket at *http://www.regulations.gov* contains a historical fee schedule that shows the immigration benefit fee history since FY

although agency is not prohibited from charging applicant full cost of services rendered to applicant which also results in some incidental public benefits). Congress initially enacted immigration fee authority under the IOAA. See *Ayuda, Inc.* v. *Attorney Genera*l, 848 F.2d 1298 (DC Cir. 1988). Congress thereafter amended the relevant provision of law to require deposit of the receipts into the separate Immigration Examinations Fee Account of the Treasury as offsetting receipts to fund operations, and broadened the fee setting authority. Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991, Public Law 101–515, sec. 210(d), 104 Stat. 2101, 2111 (Nov. 5, 1990). Additional values are considered in setting Immigration Examinations Fee Account fees that would not be considered in setting fees under the IOAA. *See* 72 FR at 29866—7.

[4] DHS may reasonably adjust fees based on value judgments and public policy reasons where a rational basis for the methodology is propounded in the rulemaking. *See FCC* v. *Fox Television Stations, Inc.,* 556 U.S. —, —, 129 S.Ct. 1800, 1811 (2009); *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29 (1983).

[5] FY 2008/2009 Fee Rule as used in this rule encompasses the proposed rule, final rule, fee study, and all supporting documentation associated with the regulations effective July 30, 2007.

1985. The Immigration and Naturalization Service (INS) or USCIS also adjusted fees incrementally in 1994, 2002, 2004, and 2005. *See,* respectively, 59 FR 30520 (June 14, 1994); 66 FR 65811 (Dec. 21, 2001); 69 FR 20528 (April 15, 2004); and 70 FR 56182 (Sep. 26, 2005). Prior to USCIS's 2007 review and update, the last comprehensive fee review was conducted by INS in 1998. 63 FR 43604 (Aug, 14, 1998).

USCIS is committed to reviewing the IEFA every two years consistent with the biennial review standard of the CFO Act and guidance from OMB Circular A–25. The FY 2008/2009 Fee Rule followed nearly a decade without a comprehensive review of IEFA fees, and fees increased by a weighted average of 86 percent to recover both base costs and costs for improving operations and service-wide performance needs. By reviewing the IEFA every two years, USCIS is able to implement more moderate fee changes and avoid periods of inadequate revenue that typically precede large fee increases. Additionally, conducting a comprehensive review every two years will allow USCIS to incorporate the productivity gains achieved from investments in technology and modernization of agency operations. These investments should result in improved performance and lower costs.

Table 1 sets out the current IEFA and biometric fee schedule.

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Table 1 – Immigration Benefit Request Fees		
Form No.	**Title**	**Fee**
I-90	Application to Replace Permanent Resident Card	$290
I-102	Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	$320
I-129	Petition for a Nonimmigrant Worker	$320
I-129F	Petition for Alien Fiancé(e)	$455
I-130	Petition for Alien Relative	$355
I-131	Application for Travel Document	$305
I-360	Petition for Amerasian, Widow(er), or Special Immigrant	$375
I-140	Immigrant Petition for Alien Worker	$475
I-191	Application for Advance Permission to Return to Unrelinquished Domicile	$545
I-192	Application for Advance Permission to Enter as Nonimmigrant	$545
I-193	Application for Waiver of Passport and/or Visa	$545
I-212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	$545
I-290B	Notice of Appeal or Motion	$585
I-360	Petition for Amerasian, Widow(er), or Special Immigrant	$375
I-485	Application to Register Permanent Residence or Adjust Status	$930
I-526	Immigrant Petition by Alien Entrepreneur	$1,435
I-539	Application to Extend/Change Nonimmigrant Status	$300
I-600/600A I-800/800A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing of Orphan Petition	$670
I-601	Application for Waiver of Ground of Excludability	$545
I-612	Application for Waiver of the Foreign Residence Requirement	$545
I-687	Application for Status as a Temporary Resident under Sections 245A or 210 of the Immigration and Nationality Act	$710
I-690	Application for Waiver of Grounds of Inadmissibility	$185
I-694	Notice of Appeal of Decision under Sections 245A or 210 of the Immigration and Nationality Act	$545
I-698	Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of Public Law 99-603)	$1,370
I-751	Petition to Remove the Conditions of Residence	$465
I-765	Application for Employment Authorization	$340
I-817	Application for Family Unity Benefits	$440
I-824	Application for Action on an Approved Application or Petition	$340
I-829	Petition by Entrepreneur to Remove Conditions	$2,850
	Civil Surgeon Designation	$0
I-924	Application for Regional Center under the Immigrant Investor Pilot Program	$0
N-300	Application to File Declaration of Intention	$235
N-336	Request for Hearing on a Decision in Naturalization Proceedings	$605
N-400	Application for Naturalization	$595

Table 1 – Immigration Benefit Request Fees		
Form No.	**Title**	**Fee**
N-470	Application to Preserve Residence for Naturalization Purposes	$305
N-565	Application for Replacement Naturalization/Citizenship Document	$380
N-600/ 600K	Application for Certification of Citizenship/ Application for Citizenship and Issuance of Certificate under Section 322	$460
	Immigrant Visa	$0
Biometrics	Capturing, Processing, and Storing Biometric Information	$80

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C. USCIS Accomplishments Funded Under the 2007 Fee Adjustment

The 2007 adjustment to USCIS's fee schedule enabled USCIS to accomplish several critical service actions and improvements, including improved service delivery. The following are some of the key accomplishments:

- USCIS processed nearly 1.2 million naturalization applications in FY 2008, 56 percent more than FY 2007. As of March 2010, approximately 262,000 naturalizations cases were pending—one of the lowest levels in recent history.
- A surge response plan implemented in FY 2008 enabled USCIS to meet nearly all FY 2008/2009 Fee Rule processing time goals by the end of FY 2009.
- In FY09 USCIS and the FBI effectively eliminated the National Name Check Program (NNCP) backlog. NNCP now is able to complete 98 percent of name check requests submitted by USCIS within 30 days, and the remaining 2 percent within 90 days.
- Refugee admissions totaled 74,652 for FY 2009, a 25 percent increase over the FY 2008 admissions level. This figure includes the processing of 18,833 Iraqi refugees, up from 13,000 in FY 2008.
- USCIS is using System Qualified Adjudication (SQA) to electronically adjudicate some cases and determine those that require closer review. This improvement helps staff focus attention on more complex cases including those where discrepancies have been found. USCIS uses SQA on about 5 percent of immigration benefit requests.
- USCIS implemented a secure mail delivery process whereby USCIS delivers re-entry permits and refugee travel documents to applicants via the U.S. Postal Service Priority Mail. This process allows documents to be delivered in two to three days with delivery confirmation.
- USCIS is transitioning to a U.S. Department of the Treasury Lockbox provider and away from dispersed collection points to improve intake operations and control the timing of fee deposits. Two major forms—Form N–400, Application for Naturalization, and Form I–90, Application to Replace Permanent Resident Card—have already been centralized for filing at the Lockbox. Likewise, forms related to international adoptions that are filed domestically have been centralized for filing at the Lockbox: (Form I–800, Petition to Classify Convention Adoptee as an Immediate Relative; Form I–800A, Application for Determination of Suitability to Adopt a Child from a Convention Country; Form I–600, Petition to Classify Orphan as an Immediate Relative; and Form I–600A, Application for Advance Processing of Orphan Petition). USCIS centralized eight more application types in December 2009.

In tandem with the additional capacity and efficiency improvements in the FY 2008/2009 Fee Rule, USCIS committed to reducing immigration benefit request processing times. Two performance goals were specified:

- Reduce processing times by the end of FY 2008 for four key benefits:
  - Application to Register Permanent Residence or Adjust Status (Form I–485), from six months to four months;
  - Application for Naturalization (Form N–400) from seven months to five months;
  - Application to Replace Permanent Residence Card (Form I–90) from six months to four months; and
  - Immigrant Petition for Alien Worker (Form I–140), from six months to four months.
- Achieve a 20 percent reduction in average application processing times by the end of FY 2009.

During the period between the 2007 notice of proposed rulemaking and implementation of a final rule on July 30, 2007, USCIS received a substantial surge in immigration benefit requests. This surge more than doubled the number of naturalization applications received for the entire year—at the lower fee level which the fee study had found insufficient to cover the costs of processing those applications. Naturalization applications are very labor-intensive and the additional surge had a significant impact on USCIS resources.

USCIS responded to the 2007 surge by rapidly adding capacity in 2008 in excess of the increases planned in connection with the FY 2008/2009 Fee Rule. Despite completing 1.6 million more requests than received during FY 2008, USCIS could not meet its processing time goals. As a result, all of the FY 2008 goals for key immigration benefits were postponed until the end of FY 2009. No change was made to the existing 20 percent processing time reduction goal slated to be reached by the end of FY 2009. USCIS achieved nearly all of the goals set for the FY 2008/2009 Fee Rule by the end of FY 2009.

D. Processing Time Outlook

USCIS met or exceeded nearly all FY 2008/2009 Fee Rule processing time performance goals by the end of FY 2009. Processing time progress updates are posted monthly to the USCIS Web site. For the FY 2010/2011 period, USCIS intends to ensure that the FY 2008/2009 Fee Rule average processing time goals are met and maintained. Wherever appropriate and feasible, USCIS aims to exceed target performance goals through existing staff levels, efficiency improvements, and systems modernization. USCIS does not plan to increase adjudication staffing levels and, in fact, has and will continue to reduce staff during the FY 2010/2011 biennial period based on current revenue trends and the institutional focus on countering fee increases to the extent possible.

E. FY 2008/2009 Fee Rule Enhancements

Table 2 provides a status summary of all fee rule initiatives by program. USCIS set forth 43 enhancements and initiatives in the FY 2008/2009 fee rule. *See, e.g.,* 72 FR 4888 at 4898–4902 (Feb

1, 2007); 72 FR 29851 at 29855 (May 30, 2007). USCIS has successfully implemented these enhancements and initiatives, and, of 43 initiatives, 35 are complete.

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Table 2 – Status of FY 2008/2009 Fee Rule Enhancements

PROGRAM	COMPLETION DATE
Office of Administration	
Lease Acquisition & Rent	May 2011
Procurement	COMPLETE
Office of Chief Counsel	
Attorneys & Support	COMPLETE
Office of Chief Information Officer	
Baseline Automation Support Infrastructure for Citizenship Services (BASICS)	April 2013
Computer-Linked Application Information Management System 3 Program Optimization (CLAIMS 3 Program Optimization (C3PO))	June 2011
Enterprise Citizens and Immigration Services Centralized Operational Repository (e-CISCOR)	March 2011
IT Portfolio	December 2010
Office of Citizenship	
Learn About the United States	COMPLETE
New Citizen's Almanac	COMPLETE
Office of the Chief Financial Officer	
Performance Analytics	COMPLETE
Budget	COMPLETE
Internal Controls	COMPLETE
Competitive Sourcing Reviews	COMPLETE
Service Level Agreements (SLAs)	COMPLETE
Financial Management Service Level Agreements	COMPLETE
Office of Policy and Strategy	
Policy Consultation	COMPLETE
Research and Evaluation	COMPLETE
Administrative Appeals Office	
Management Support Contract	COMPLETE
Domestic Operations	
Second Full-Service Production Facility	POSTPONED
Adjudication Officers & Support	COMPLETE
Enhanced Delivery of Secure Documents	TBD
Integrated Document Production	COMPLETE
FBI Background Checks	COMPLETE
National Security & Records Verification	
Fraud Prevention and Detection	COMPLETE
Administrative Site Program	COMPLETE
Fraud Detection and National Security (FDNS) Data Systems	June 2011
Freedom of Information Act (FOIA)	COMPLETE
National Archives and Records Administration (NARA) Transfer	COMPLETE
Change of Address	COMPLETE
Refugee, Asylum and International Operations	
Cuban-Haitian Entrant Program	COMPLETE

Table 2 – Status of FY 2008/2009 Fee Rule Enhancements

PROGRAM	COMPLETION DATE
Office of Human Capital, Training, and Career Development	
EDvantage	COMPLETE
Blended Learning Solution	COMPLETE
Enterprise Employee Orientation	COMPLETE
Enterprise Development Program	COMPLETE
Human Resources Service Level Agreements	COMPLETE
Occupational Safety and Health	COMPLETE
National Recruitment Program	COMPLETE
Office of Security and Investigations	
Protective Security Options	COMPLETE
Internal Security and Investigations Operations	COMPLETE
Crisis Management & Information Security	COMPLETE
Information Technology Security	COMPLETE
Personnel Security Operations	COMPLETE
Emergency Management and Safety	
Emergency Preparedness Operations	COMPLETE

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F. Administration Policy

President Obama launched a multi-year effort in his fiscal year (FY) 2010 Budget to reform immigration fees. The purpose of reforming immigration fees is to improve the transparency and precision of how fees are determined and to develop, as a matter of discretion, fees that reflect more closely actual costs of adjudication and assignable associated costs. The President's FY 2010 Budget requested appropriations from Congress to allow USCIS to remove the surcharge for refugee and asylum program costs and military naturalizations. Additional steps to reform immigration fees have continued in the President's FY 2011 Budget request and in this proposed fee rule.

DHS has calculated the proposed changes to the fee schedule based on the fee reform steps taken in the FY 2010 Budget and FY 2011 Budget request. These changes may require adjustment if USCIS's appropriation requests are not enacted or are reduced for FY 2011. Accordingly, DHS is proposing a range of fees to account for fee increases that would be necessary if the requested appropriations for FY 2011 are not enacted.

IV. FY 2010/2011 Immigration Examination Fee Account Fee Review

A. Overall Approach

USCIS manages three fee accounts: The IEFA (which includes premium processing revenues set aside for infrastructure improvements by the Office of Transformation Coordination for near- and long-term investments to strategically improve USCIS operations),[6] the Fraud Prevention and Detection Account (immigration benefit fraud),[7] and the H–1B Nonimmigrant Petitioner Account.[8] The Fraud Prevention and Detection account and the H–1B Nonimmigrant Petitioner Account are both funded by statutorily-set fees. The proceeds of these fees are used for fraud detection and prevention activities and to provide training for American workers in order to reduce employer reliance on nonimmigrant workers, respectively. DHS has no authority to adjust fees for these accounts.

The IEFA account comprised approximately 95 percent of total funding for USCIS in FY 2009, excluding premium processing, and is the focus of this proposed rule. The FY 2010/2011 Fee Review encompasses three core elements:

- *Cost Projections*—The cost baseline is the estimated level of funding necessary to maintain an adequate level of operations and does not include program increases for new development, modernization, or acquisition. Proposed program increases are considered outside of the baseline. Cost projections for FY 2010/2011 are derived from the USCIS operating plan for FY 2010.
- *Revenue Status and Projections*—Actual revenue collections for FY 2009 are used to derive projections for the two-year period of the fee review based on current and anticipated trends.
- *Cost and Revenue Differential*—The difference between anticipated costs and revenue, assuming no change in fees, is identified.

The primary objective of this fee review is to ensure immigration benefit request fee revenue provides sufficient funding to meet ongoing operating costs, including national security, customer service, and business adjudicative processing needs which are essential to provide immigration benefits and services.

B. Basis for Fee Schedule Changes

When conducting the comprehensive fee review, USCIS reviewed its recent cost history, operating environment, and current service levels to determine the appropriate method to assign costs to particular form types. Overall, USCIS kept costs as low as possible and minimized non-critical program changes that would increase costs.

1. Costs

a. Baseline Adjustments

The cost baseline is comprised of the resources (such as personnel and

[6] INA sections 286(m), (n), 8 U.S.C. 1356(m), (n).

[7] INA sections 214(c), 286(v), 8 U.S.C. 1184(c) 1356(v).

[8] INA sections 214(c), 286(s), 8 U.S.C. 1184(c), 1356(s).

general expenses) necessary for each USCIS office to sustain operations. The baseline excludes new or expanded programs or significant policy changes. A detailed USCIS annual operating plan (AOP) is the starting point for baseline estimates.

In developing estimates of program needs for FY 2010/2011, USCIS used the FY 2010 AOP as the starting point. In response to reduced workload and declining revenue during both FY 2008 and FY 2009, USCIS reduced baseline costs for FY 2010.

Expenditures were reduced by $111 million in such areas as staffing and correspondingly reduced introductory training programs, overtime, and facilities improvement.

These reductions were offset by necessary pay adjustments and increases to programs to maintain current services, particularly adjustments to programs that received one-time reductions during FY 2009. Examples of necessary adjustments include:

- Pay inflation ($15.1 million in FY 2010 and $16.5 million in FY 2011). The assumed government-wide pay inflation rate for FY 2010 and FY 2011 is 2 percent and 2.1 percent respectively;
- Within-grade pay step increases ($15.4 million in FY 2010 and $16 million in FY 2011);
- Rent increases ($15.1 million in FY 2010 and $27.6 million in FY 2011). Rent increases as existing leases expire and are renegotiated. Rent is projected to increase by 9 percent in FY 2010 and 15 percent in FY 2011. The increase in rent is attributable to several factors including the size of the facilities, the growth of USCIS, the timing of facility projects, and the cost of construction. Many facility projects that are scheduled for completion in FY 2010 commenced in FY 2008. The additional space was acquired based on increased staffing levels (a direct result of the FY 2008/2009 Fee Rule enhancements). Outside of the acquisition of new facilities, annual rent costs increase due to higher operating costs (such as utilities) that USCIS must pay to the General Services Administration.

Table 3 summarizes adjustments to the FY 2009 cost baseline, as well as the cost increases and decreases to reach the FY 2010 and FY 2011 cost baselines. Overall, the IEFA cost baseline decreases by approximately 1.5 percent in FY 2010 from FY 2009 and increases by 2.7 percent for FY 2011.

Table 3 – Baseline Adjustments
(Dollars in Thousands)

FY 2009 Adjusted IEFA Budget	$2,420,187
Plus: Pay Inflation and Promotions/Within Grade Increases	30,569
Plus: Net Additional Resource Requirements	45,097
Plus: FY 2010 AOP Spending Cuts	-111,175
Total FY 2010 IEFA Budget	**$2,384,678**
Plus: Pay Inflation and Promotions/Within Grade Increases	37,548
Plus: Net Additional Resource Requirements	27,330
Total FY 2011 IEFA Budget	**$2,449,556**

b. Program Increase

USCIS has included only one program increase, encompassing $30 million in infrastructure funding to support the transformation of USCIS operations under its transformation program. To improve operational efficiency, enhance customer service, and increase national security, USCIS is centralizing and consolidating the electronic environments used for case processing and management and to standardize and improve business processes. A large portion of this effort is dedicated to developing and integrating information management systems. USCIS will migrate from a paper file-based, non-integrated systems environment to an electronic customer-focused, centralized case management environment for benefit processing. This transformation will allow USCIS to streamline benefit processing, eliminate the capture and processing of redundant data, and reduce the number of and automate its forms. This process will be a phased multi-year initiative to restructure USCIS business processes and related information technology systems.

Direct transformation program costs are currently funded through premium processing fees. Some supporting infrastructure upgrades outside of the Transformation Program are necessary to enable implementation such as upgrades to existing network, communication, and supporting systems. USCIS is assuming a $30 million program increase each year, for a total of $60 million in additional costs over the fee review period.

2. Revenue

During the fourth quarter of FY 2007, USCIS received over 2.5 million filings, compared to 1.3 million received in the same period of FY 2006, as applicants attempted to file before the July 30, 2007 fee adjustment and in response to adjustments made by the Department of State (DOS) to its July 2007 visa bulletin. This filing surge created a delay in receipting, which led to an increase in revenue at the beginning of FY 2008. The additional applications received were charged lower pre-FY 2008/2009 Fee Rule fees. The increase in early filings meant that FY 2008 application levels were substantially below expectations. The decrease in FY 2008 filings began the last two quarters of FY 2008 and continued throughout FY 2009. IEFA revenue for FY 2008 was $75 million below the estimated FY 2008 projection of $2.329 billion, despite an estimated $300 million of FY 2007 applications receipted in FY 2008. IEFA revenue for FY 2009 was $345 million below the $2.329 billion projection.

Actual FY 2009 IEFA revenue includes the revenue associated with the temporary protected status (TPS) registration that was not included in the FY 2008/2009 Fee Rule projections. In order to have a more reliable budget estimate upon which to base its fees, USCIS chose not to rely on temporary funding sources such as TPS that are subject to being discontinued annually. Therefore, USCIS cannot build TPS cost and revenue into long-term plans. Thus the fees proposed in this rule are based on the TPS Program for re-registrants of certain nationalities not continuing and their associated fees not being collected. When estimated TPS revenue of $120 million is factored out, the IEFA revenue was $465 million below the FY 2008/2009 Fee Rule projections.

USCIS fee revenue collections are affected by many things including the economy, debate in Congress over immigration legislation, and business cycles. A significant downward trend in employment benefit receipts in FY 2009 suggests that the primary cause of reduced receipts was the downturn in the economy. Employment-based workload, adjustment of status and naturalization requests—both primary consumers of work hours and sources of revenue—were also significantly lower than FY 2007 receipts. In addition, there is anecdotal evidence that there was a "surge" in the volume of certain applications, the Application for Naturalization in particular, just before the previous fee rule went into effect that may have had an impact on application volume in FY 2009. The fee increase may have been the reasons for this surge, although other factors, such as the immigration legislation that was considered but not enacted by Congress in 2007, and the 2008 Presidential election, are believed to have had an impact on filing volumes during FY 2008.

Given the downward revenue trend for FY 2008 and FY 2009, USCIS has formulated conservative volume and revenue projections. Overall, this fee review assumes that baseline revenue will decline from an FY 2008/2009 Fee Rule projection of $2.329 billion to $2.056 billion, a decrease of approximately 12 percent. This determination is based on a workload volume reduction from the FY 2008/2009 projections of approximately 1.6 million benefit requests (including biometrics) and a fee-paying volume reduction of 827,689. *See* 72 FR 29851. Table 4 summarizes the projected cost differential.

Table 4 - IEFA Baseline Cost and Revenue Comparison
(Dollars in Thousands)

	FY 2010	FY 2011	FY 2010/2011 AVERAGE
Revenue	$2,056,213	$2,056,213	$2,056,213
Cost	$2,384,678	$2,449,556	$2,417,117
$ Delta	**($328,465)**	**($393,343)**	**($360,904)**

Historically and for the purpose of the fee review, USCIS has reported costs and revenue using an average over the biennial time period. In Table 5, FY 2010 and 2011 costs and revenue are averaged to determine the projected fee rule revenue and cost amounts. Based on current immigration benefit and biometric service fees and projected volumes, fees are expected to generate $2.056 billion in annual revenue in FY 2010 and FY 2011. For the same period, the average cost of processing those benefit requests is $2.417 billion. This calculation results in an average annual deficit of $361 million.

3. Refugee and Asylum Surcharge

The President's FY 2010 Budget requested $200 million to eliminate estimated asylum and refugee surcharges. *See* Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2010,* at 510–1 (2009), available at *http://www.gpoaccess.gov/usbudget/fy10/pdf/appendix/dhs.pdf.* Congress enacted $50 million for FY 2010, contingent upon conforming rulemaking to adjust the surcharges accordingly (*i.e.,* the $50 million represents an annualized figure of $200 million, appropriated in the expectation that it will fund the final quarter of FY 2010 rather than the entire year). DHS Appropriation Act 2010, 123 Stat. at 2164–5. Costs of refugee and asylum processing are currently borne by all fee-paying applicants as a surcharge applied to each fee-paying immigration benefit request. *See* 72 FR at 29859 (all immigration benefit and petition fees include a total of $72 in "surcharges" to recover asylum and refugee costs, and fee waiver and exemption costs). While consistent with the Immigration and Nationality Act, this surcharge raises fees for those applying for other benefits. Estimated costs in these areas include:

- The budgets of both the Refugee and Asylum Divisions of the Refugee, Asylum, and International Operations (RAIO) Directorate, along with the cost of RAIO Headquarters;
- Five percent of the International Operations (IO) office, representing the portion of IO that completes refugee work;
- A proportionate share of overhead costs of USCIS; and
- The cost of the Cuban-Haitian Entrant Program.

The $50 million appropriation enacted by Congress only replaces a portion of the surcharge for FY 2010 representing one-quarter of the fiscal year. DHS Appropriation Act 2010, 123 Stat. at 2164–5. President Obama requested an appropriation from Congress of $207 million to replace the full, annualized costs of these activities in FY 2011. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2011,* at 521–2 (2010) (2011 Budget Request), available at *http://www.whitehouse.gov/omb/budget/fy2011/assets/dhs.pdf.* If Congress enacts the requested FY 2011 appropriations, surcharges for this category of costs will be eliminated when this proposed rule is promulgated as a final rule and becomes effective. If the requested appropriation is not enacted, or a different amount is appropriated, the final rule will adjust the fee schedule accordingly. *See* Table 16 (comparative fee schedule with and without requested appropriations).

4. Military Naturalizations

Service members in any of the branches of the U.S. Military who meet certain requirements may apply for naturalization and are exempt from paying the fee for the Application for Naturalization (Form N–400). INA sec. 328(a)(4), 8 U.S.C. 1439(a)(4); INA sec. 329(b)(4), 8 U.S.C. 1440(b)(4). Congress provided $5 million in FY 2010 to cover the estimated cost to USCIS of processing military naturalization applications. DHS Appropriation Act 2010, Public Law 111–83, 123 Stat. at 2164–5. As recognized by Congress in providing this appropriation, these costs

should not be borne by other fee-payers, particularly since this volume increases as the Department of Defense expands its recruitment efforts to certain aliens and other than lawful permanent residents. The estimated cost is based on a projected workload of 9,500 military naturalizations multiplied by the current fee of $595. The FY 2011 Budget Request of $5 million in appropriations for the Department of Defense is reflected in the recalculation of the proposed fees. *See* 2011 Budget Request, at 521–2. If Congress appropriates a different amount, the fees will be adjusted accordingly in the final rule. Table 5 depicts the cost and revenue differential after appropriations for refugee, asylum, and military naturalizations are assumed.

Table 5 – IEFA Cost Baseline and Revenue Comparison after Incorporating Refugee, Asylum, and Military Naturalization Actual (FY 2010) and Assumed (FY 2011) Appropriations
(Dollars in Thousands)

	FY 2010	FY 2011	FY 2010/2011 AVERAGE
Revenue	$2,056,213	$2,056,213	$2,056,213
Cost	$2,329,678	$2,237,556	$2,283,617
$ Delta	**($273,465)**	**($181,343)**	**($227,404)**

5. Proposed FY 2011 Appropriations for Systematic Alien Verification for Entitlements (SAVE) Program and the Office of Citizenship

The $385,800,000 for USCIS funding in the FY 2011 Budget Request seeks appropriations to cover the estimated cost of the SAVE program ($34 million) and the Office of Citizenship ($18 million) for FY 2011. *See* 2011 Budget Request, at 521–2. If Congress appropriates a different amount, the fees will be adjusted accordingly in the final rule. The fees proposed in this rule are based on the costs of the SAVE program and the Office of Citizenship not being financed by fee revenue and, instead, paid with appropriated funds. The baseline costs (without program increases) are approximately $26.1 million in FY 2011. If appropriations are not approved for these activities, USCIS will be required to adjust fees to reflect costs for the programs.

The proposal follows initial steps taken within enacted FY 2010 appropriations for USCIS fee reform that moved some asylum, refugee, and military naturalization costs out of the fee structure. The purpose of this fee reform is to improve the linkage between fees paid by USCIS applicants and petitioners and the cost of programs and activities to provide immigration benefits. Because of fee exemptions for beneficiaries of asylum, refugee, and military naturalization, fee surcharges were added to other applications and petitions. 72 FR 29859. Similarly, costs of SAVE and the Office of Citizenship are currently only partially supported by fee revenue. Additional fee reform in these areas moves these costs out of the USCIS fee structure and improves the precision and transparency of USCIS fees.

The IEFA cost baseline is increasing while anticipated volumes and revenue are expected to decrease compared to the last fee rule. Table 6 depicts the cost and revenue differential after appropriations for refugee, asylum, military naturalizations, SAVE, and the Office of Citizenship are assumed.

Table 6 – IEFA Cost Baseline and Revenue Comparison after Additional Proposed Appropriation for SAVE and the Office of Citizenship
(Dollars in Thousands)

	FY 2010	FY 2011	FY 2010/2011 AVERAGE
Revenue	$2,056,213	$2,056,213	$2,056,213
Cost	$2,329,678	$2,211,454	$2,270,566
$ Delta	**($273,465)**	**($155,241)**	**($214,353)**

6. Establish an Immigrant Visa Processing Fee

DHS proposes to establish a new fee for immigrant visas to recover the costs to USCIS for related activities. Immigrant visas are issued by the Department of State (DOS) in overseas consulates to foreign nationals seeking to reside permanently in the United States. INA section 221–222, 8 U.S.C. 1201–1202. Although DOS issues the visas, USCIS must complete several visa application-related activities prior to issuance of a permanent resident card. USCIS must create a file, review the application, correspond with the applicant, and produce and issue a secure card upon approval. DOS charges fees for immigrant visas, but USCIS does not. The DOS fee is currently established, using DOS's fee-setting methodology, at $355. 22 CFR 22.1. The DOS fee was established to recover DOS costs only, and the USCIS FY 2010/2011 Fee Review was performed without consideration of fees paid by applicants to DOS. Other USCIS applicants have historically borne the cost of processing this immigrant visa workload.

The USCIS fee only reflects the costs incurred by USCIS. Although USCIS projects an annual volume of 430,000 requests, in anticipation of the timing of implementation of a final rule promulgating the fee, USCIS only accounts for revenue for the second half of the first fiscal year, or 215,000 immigrant visas. USCIS projects that the collection of the immigrant visa fee will be implemented beginning in FY 2011. The proposed fee based on the workload analysis is $165. The additional revenue from implementing this fee will reduce

fees paid by, and fee increases charged to, other applications.

7. Civil Surgeon Program Fees

DHS proposes to establish new fees for processing civil surgeon designations. Medical examinations are needed for most adjustment of status cases (Form I–485) and requests for V nonimmigrant status (Form I–539). The medical examination must be conducted by a civil surgeon who has been designated by USCIS. USCIS traditionally has not charged civil surgeons seeking this designation a fee to recover the costs associated with this application; these costs have been recovered as part of the administrative overhead charged to all fee-paying applicants and petitioners. The process for receiving and reviewing the information required for a civil surgeon designation, however, is labor intensive. For USCIS to continue to provide civil surgeon designations in a timely manner and to further refine the cost analysis and fee setting, USCIS must establish a fee of $615 to cover the cost of processing requests for such designations. Collecting a fee for these services will ensure that other fee-paying applicants do not bear these costs.

8. EB–5 Regional Center Designation Fee

DHS proposes to add a fee for adjudication of regional center designations under the Immigrant Investor Pilot Program. *See* Public Law 102–395, tit. VI, sec. 610, 106 Stat. 1874 (1992) (8 U.S.C. 1153 note). This program, implemented by Congress in 1990 to stimulate the U.S. economy, allows certain foreign investors to obtain lawful permanent resident status in the United States as EB–5 immigrants by making certain levels of capital investment and associated job creation or preservation. One aspect of this program (the Regional Center Pilot Program) encourages foreign investors to invest funds in a distinct economic "regional center." A regional center is an economic unit, public or private, engaged in the promotion of economic growth, improved regional productivity, job creation, and increased domestic capital investment. *See* 8 CFR 204.6(e). An individual or entity interested in participating in the Regional Center Pilot Program must file a Regional Center Proposal with USCIS to request USCIS approval of the proposal and designation of the entity as a regional center. The proposal must provide a framework within which individual alien investors affiliated with the regional center can satisfy the EB–5 eligibility requirements and create qualifying EB–5 jobs.[9]

USCIS's fee study found that these designations are exceptionally labor intensive for USCIS. Historically, the cost of this designation process has been borne by all fee-paying applicants and beneficiaries. Accordingly, to refine the cost accounting and fee structure, and to make the distribution of costs more equitable, DHS proposes a new fee of $6,230 per request for designation.

9. Employment Authorization Document Fees for Applicants Covered by Deferred Enforced Departure (Form I–765)

DHS proposes to collect a fee for an Application for Employment Authorization and the associated biometrics for aliens granted deferred enforced departure (DED). DHS also proposes to remove an extraneous provision from the employment authorization regulations relating to aliens granted "extended voluntary departure by the Attorney General as a member of a nationality group pursuant to a request by the Secretary of State." 8 CFR 274a.12(a)(11).

In the Immigration Act of 1990, Congress established the temporary protected status (TPS) program and instructed that TPS constitutes the exclusive authority of the Attorney General (now the Secretary of Homeland Security) to permit deportable or paroled aliens to remain in the United States temporarily because of their particular nationality. *See* INA sec. 244(g), 8 U.S.C. 1254a(g). Accordingly, since 1990 neither the Attorney General nor the Secretary have designated a class of aliens for nationality-based "extended voluntary departure," and there no longer are aliens in the United States benefiting from such a designation. Accordingly, DHS proposes to remove the obsolete reference to extended voluntary departure.

On occasion, however, Presidents have issued executive orders or memoranda directing the deferral of enforced departure from the United States of certain nationals of a particular country for temporary periods and have directed that eligible individuals be provided employment authorization during the period of deferral. *See, e.g.,* Exec. Order No. 12711, 55 FR 13897 (April 11, 1990) (deferring departure of certain Chinese nationals); Memorandum from President Barack Obama to Secretary of Homeland Security Janet Napolitano Extending Deferred Enforced Departure for Liberians (Mar. 20, 2009), available at *http://www.whitehouse.gov/the_press_office/Presidential-Memorandum-Regarding-Deferred-Enforced-Departure-for-Liberians.* DHS proposes changes that will clarify its authority to process and collect a fee for EADs and associated biometrics for aliens eligible for DED. Proposed 8 CFR 103.7(b) and 274a.12(a)(11). Collection of the EAD fee from individuals who are covered by an occasional Presidential directive to defer their departure temporarily will facilitate adjudication of the benefit, and the production of secure, biometric EADs, as with other EAD-eligible groups, such as aliens granted TPS. An EAD applicant may request a fee waiver based on an inability to pay the fee. The new provision will still be in regulations governing work authorization incident to status. 8 CFR 274a.12(a). The proposed change specifies that work authorization will be provided under terms and conditions set by the Secretary consistent with the President's DED directive. Proposed 8 CFR 274a.12(a)(11).

C. Summary

Projected costs are expected to exceed projected revenue. This differential must be addressed with increased revenue, notwithstanding new appropriations and cost adjustments. Increased revenue will be derived from new immigrant visas, civil surgeon designations, and immigrant investors. Increased revenue will also be derived from a weighted average fee increase on existing immigration benefits. Some fees will be reduced due to lower processing costs; other fees will increase. The level of fee increase necessary to align costs and revenue is a weighted average of 10 percent after adjusting prices to account for reduced surcharges and other costs from appropriations for SAVE, Office of Citizenship, refugee and asylum costs, and military naturalization reimbursements from DOD. USCIS will adjust fees consistent with the details of this supporting documentation if proposed appropriations are not approved.

D. Performance Improvements

In the FY 2008/2009 fee rule, USCIS committed to a series of performance improvements and reduced processing time goals. For the FY 2010/2011 period, USCIS is identifying in this fee rule a new set of goals and performance improvements that are aimed at increasing accountability, providing

[9] *See* "Adjudication of EB–5 Regional Center Proposals and Affiliated Form I–526 and Form I–829 Petitions; Adjudicators Field Manual (AFM) Update to Chapters 22.4 and 25.2," Donald Neufeld, Acting Associate Director, Domestic Operations, USCIS (Dec. 11, 2009); *http://www.uscis.gov.*

better customer service, and increasing efficiency. These enhancements include:

• *Expanding the use of Systems Qualified Adjudication to a larger share of USCIS's workload.* USCIS expects all Form I–90, I–765, and I–821 re-registration applications will be supported by electronic adjudication by September 2011. In addition to improving the processing of these requests, this step will provide adjudicators with more time to focus on more complex applications.

• *Begin Deployment of Transformed Processes and System.* USCIS expects to deploy the initial increment of its transformation program by the end of FY 2011. As one of the Administration's High Priority Performance Goals,[10] USCIS has committed to ensuring that at least 25 percent of applications will be electronically filed and adjudicated using the new transformed integrated operating environment by FY 2012.

• *Integration of productivity measures in future fee review methodology.* Beginning with the next fee rule, USCIS will integrate productivity measures into the underlying methodology USCIS uses to conduct fee studies. This means that efficiency gains resulting from information technology investments and process improvements will be clearly identified, including the cost savings that occur due to these changes, ensuring that those savings are incorporated into new fee amounts.

V. Fee Review Methodology

When conducting a fee review, USCIS reviews its recent cost history, operating environment, and current service levels to determine the appropriate method to assign costs to particular benefit requests. The methodology used in the review reflects a robust capability to calculate, analyze, and project costs and revenues.

USCIS uses commercially available activity-based costing (ABC) software to create financial models to calculate immigration benefit requests and biometric service fees. Following the FY 2008/2009 Fee Rule, USCIS identified several key methodology changes to improve the accuracy of the ABC model. Improvements were also suggested by the Government Accountability Office (GAO) following a review and completion of the FY 2008/2009 Fee Rule.[11] These changes include analyzing cost allocation methods to evaluate methods that may offer greater precision and fully documenting the rationale and any related analysis for using the assumptions and cost assignment methods selected. USCIS continues to update the ABC model with the most current information for fee review and cost management purposes.

A. Background

ABC is a business management tool that assigns resource costs to operational activities and then to products and services. These assignments provide an accurate cost assessment of each work stream involved in producing the individual outputs of an agency or organization. ABC is a preferred cost accounting method endorsed by the FASAB and enables USCIS to conform to Managerial Cost Accounting Concepts and Standards for the Federal Government.[12]

1. ABC Methodology

a. Resources

The total resource base for the ABC model is the FY 2010/2011 cost baseline and assumes that USCIS will receive $55 million in FY 2010 and $238 million in FY 2011 from appropriations to replace surcharges. The resulting $2.271 billion (*see* Table 6) is the estimated cost of FY 2010 and FY 2011 resources necessary to fund the full cost of processing immigration benefit requests and biometric services for which USCIS charges a fee, as well as the cost of providing similar services at no cost. This represents the first stage of the ABC process.

The ABC model structure for FY 2010/2011 was designed to closely resemble the structure of the FY 2009 Annual Operating Plan (AOP). The AOP is the detailed budget execution plan USCIS establishes at the beginning of the fiscal year consistent with the Congressionally approved fiscal year appropriation and forecasted fee revenue. The model includes the same USCIS offices and individual line items associated with these offices. This structure provides a common format and creates a means to project out-year budgets and potentially track commitments, obligations, and expenditures by the operating plan line item description in the model.

The ABC model structure for the FY 2008/2009 Fee Rule was based on the FY 2007 AOP. Headquarters payroll and agency-wide non-payroll were very similar to the operating plan; however, payroll for field offices (Service Centers, District Offices, National Benefits Center, and National Records Center) was broken down into sub-categories similar to the internal USCIS Staffing Allocation Model (SAM).[13]

b. Resource Drivers and Resource Assignment

ABC methodology uses resource drivers to assign resources to activities. Using the resource base of $2.271 billion, costs are assigned to activities using resource drivers. All resource costs are assigned to activities, so the total resources in the model equal the total cost of activities. This represents the second stage of the ABC process.

A commonly used resource driver in ABC is an organization's number of employees and the percentage of time they spend performing certain activities. The FY 2010/2011 ABC model uses this methodology to assign resources to activities. The ABC model assigns resources to activities using authorized positions by funding stream (fund code) and Program, Project, and Activity (PPA) for each USCIS office. This driver is then weighted by the percentage of on-board positions performing specific activities within each USCIS office. These percentages are determined using a payroll position title analysis. The payroll position title analysis identifies the percentage of each office that is dedicated to the nine ABC activities (for more information *see* the section titled "Activities" below) by reviewing the titles and position descriptions of its workforce.

Other resource drivers in the FY 2010/2011 model include a direct driver

[10] See Memorandum for the Heads of Departments and Agencies, *Planning for the President's Fiscal Year 2011 Budget and Performance Plans, from Peter R. Orszag,* Director, Office of Management and Budget, June 11, 2009.

[11] Government Accountability Office, *Immigration Application Fees: Costing Methodology Improvements Would Provide More Reliable Basis for Setting Fees* (GAO–09–70, Jan. 23, 2009); Government Accountability Office, *Federal User Fees: Additional Analyses and Timely Reviews Could Improve Immigration and Naturalization User Fee Design and USCIS Operations* (GAO–09–180, Jan. 23, 2009); Statement of Susan J. Irving, Government Accountability Office, *Federal User Fees: Fee Design Characteristics and Trade-Offs Illustrated by USCIS's Immigration and Naturalization Fees,* Testimony before the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, Committee on the Judiciary, U.S. House of Representatives, 18 (March 23, 2010) (Noting that "Any user fee design embodies trade-offs among equity, efficiency, revenue adequacy, and administrative burden.").

[12] Federal Accounting Standards Advisory Board, *Statement of Financial Accounting Standards No. 4: Managerial Cost Accounting Concepts and Standards for the Federal Government* 36 (July 31, 1995).

[13] The Staffing Allocation Model is a model used to calculate estimates of staffing types and levels necessary to undertake specific workload (*e.g.,* applications and petitions) levels at target processing times.

and a rent driver that are similar to those used in the FY 2008/2009 model. The direct driver assigns specific resources directly to activities. For example, the contract issued for USCIS Application Support Centers (ASCs) only pertains to the capture biometrics activity. Therefore, the costs associated with this contract are assigned directly to the capture biometrics activity using a direct driver. The rent driver assigns estimated rent costs for each fiscal year to each USCIS office based on projected FY 2010 rent costs by location. Other overhead costs, such as the Office of Information Technology, service-level agreements, and the DHS working capital fund costs are distributed to each USCIS office on a prorated basis by authorized positions.

The FY 2008/2009 model used total authorized positions as the primary resource driver. For Headquarters offices, this driver was weighted by the estimated percentage of time spent performing certain activities, based on operational knowledge. For field offices, total positions were weighted by the time spent performing certain activities, based on operational knowledge as well as time percentages determined using officer hour data from the USCIS Performance Analysis System (PAS).[14]

The allocation methods in the FY 2008/2009 Fee Rule, as well as the FY 2010/2011 Fee Review, are consistent with the FASAB Standard 4 on managerial cost accounting concepts. They fulfill the mandate to directly trace costs when feasible, and to either assign costs on a cause-and-effect basis or allocate them in a reasonable and consistent way.

c. Activities

In ABC, activities are the critical link between resources and cost objects. This represents the third stage of the ABC process. Projected operating costs (resources) for FY 2010/2011 are spread to nine activities. They are:

- *Inform the Public* involves receiving and responding to applicant and petitioner inquires through telephone calls, written correspondence, or walk-in inquiries;
- *Capture Biometrics* involves the electronic capture of biometric information (fingerprint and photograph), background checks performed by the FBI, and use of the collected biometrics for verifying the identity of the applicants;
- *Intake* involves mailroom operations, data capture and collection, file assembly, fee receipting, and file room operations;
- *Conduct Interagency Border Inspection System (IBIS) Checks* involves the process of comparing information on applicants, petitioners, beneficiaries, derivatives, and household members who apply for an immigration benefit against various Federal lookout systems;
- *Review Records* involves searching and requesting files; creating temporary and/or permanent alien files; consolidating files; connecting returned evidence with application or petition files; pulling, storing, and moving files upon request; auditing and updating systems on the location of files; and archiving inactive files;
- *Make Determination* involves the tasks of adjudicating immigration benefits; making and recording adjudicative decisions; requesting and reviewing additional evidence; interviewing applicants; consulting with supervisors or legal counsel; and researching applicable laws and decisions on non-routine adjudications;
- *Fraud Detection and Prevention* involves activities performed by the Fraud Detection and National Security Directorate in detecting, combating, and deterring immigration benefit fraud, and addressing national security and intelligence concerns;
- *Issue Document* involves the tasks of producing and distributing secure cards that identify the holder as an alien and also identify his or her status or employment authorization;
- *Management and Oversight* involves activities in all offices that provide broad, high-level leadership to meet USCIS goals.

Management and Oversight is an activity designed to capture managerial activities at Headquarters and in the field. This activity provides a more specific depiction of the work performed by certain offices. All Headquarters offices [15] are allocated to Management and Oversight in their entirety, including the Executive Secretariat; Office of Administration; Office of the Chief Financial Officer; Office of Citizenship; Office of Communications; Office of Congressional Relations; Office of Emergency Preparedness and Coordination; Office of Equal Opportunity & Inclusion; Office of Human Capital, Training, and Management; Office of Policy & Strategy; Office of Privacy; Office of Security & Integrity; Office of the Chief Counsel; Office of the Deputy Director/Chief of Staff; Office of the Director; Office of Transformation Coordination;[16] and Office of Records.

The payroll title analysis allowed USCIS to identify leadership positions in the field offices that should be allocated to the Management and Oversight activity. Projected operating costs for FY 2008/2009 were spread to the nine activities (Inform the Public, Intake, Capture Biometrics, Conduct IBIS Check, Review Records, Fraud Detection and Prevention, Make Determination, and Issue Document). Management and Oversight was not a separate activity.

d. Activity Drivers and Activity Assignment

The fourth stage in the ABC process is driving the activity costs to the immigration benefits (cost objects). Activity costs are primarily spread to immigration benefit requests based on the percentage of total projected volume, as similar time and effort are involved in processing each application. There are unique drivers used for two of the activities—Capture Biometrics and Make Determination. The Make Determination activity is spread to requests by a factor of average adjudication time and projected volume (*i.e.,* projected adjudication hours) as these metrics pertain directly to the adjudication function and can vary significantly by application. The general premise is that the more time spent adjudicating a request, the higher the fee. Exceptions to this general rule occur when volumes skew unit costs (*e.g.,* high-volume applications tend to have lower unit costs since costs are allocated over a higher volume base) or additional activities are performed (*e.g.,* some applications require the creation of secure cards). Capture Biometrics uses a direct activity driver to drive all of the costs associated with this activity to Biometric Services.

Activity costs are spread to immigration benefit requests by the locations where they are processed apart from the Intake activity. Intake is primarily performed at the Lockbox; however, some intake is performed at the field offices. Due to varying costs at field locations, spreading intake costs by a percentage of total field office costs introduces inaccurate variability in

[14] The USCIS Performance Analysis System (PAS) is an online data entry and retrieval system used to track workload accomplishments and human resources expenditures.

[15] In January 2010, USCIS realigned its structure and management functions that created new offices and modified the reporting relationship between others. For the purpose of this fee review, the previous organizational chart, valid as of February 2009, was used.

[16] The only portion of the Office of Transformation Coordination that is treated as a Headquarters office is funding for staff (payroll, overtime, and awards) and related general expenses. Other programmatic costs are funded by premium processing revenue.

intake costs by request. There is little variability in the intake process by request type and therefore, intake costs are spread using an average cost per request. Ultimately, nearly all immigration benefit request types will be received only by Lockbox locations.

Activity costs for the FY 2008/2009 Fee Rule were spread by projected volume weighted by average adjudication time for the Make Determination activity. All other activity costs were spread using an average activity cost per application.

e. Cost Objects

Cost objects are the immigration benefits and biometric services for which USCIS charges a fee. Driving activity costs to the cost objects is the final stage of the ABC process.

Application costs were derived for virtually every immigration benefit that USCIS adjudicates including those filed for asylum and refugee protection, Temporary Protected Status, Premium Processing, and H–1B nonimmigrant petitions. The IEFA cost of requests for which no revenue is recovered is redistributed to other applications in a prorated manner similar to the way the FY 2008/2009 Fee Rule handled requests. Temporary Protected Status (Form I–821), Nicaraguan Adjustment and Central American Relief Act (NACARA) (Form I–881)—Suspension of Deportation or Application Special Rule, are temporary programs. Thus USCIS does not rely on their revenue in the FY 2010/2011 Fee Review to support baseline operations, although their costs are analyzed.

A separate fee for biometric services was also derived. The proposed rule continues to provide for a separate $85 biometric fee to accommodate national security and fraud detection decisions that may require extension of biometric requirements to additional immigration benefit requests that do not already include that fee. Table 7 outlines the fees for immigration benefits that require biometric services. These fees assume receipt of $283 million in appropriated funds in FY 2011 for refugee, asylum, military naturalization, SAVE, and Office of Citizenship activities.

Table 7 - Fees for Immigration Benefits Requiring Biometric Services

Form	Proposed Fee	Proposed Biometric Fee	Total Proposed Fee
I-90 Application to Replace Permanent Resident Card	$365	$85	$450
I-131 Application for Travel Document[17]	$360	$85	$445
I-360 Petition for Amerasian, Widow(er), or Special Immigrant[18]	$405	$85	$490
I-485 Application to Register Permanent Residence or Adjust Status	$985	$85	$1,070
I-600/600A, I-800/800A Orphan Petitions	$720	$85	$805
I-687 Application for Status as a Temporary Resident	$1,130	$85	$1,215
I-698 Application to Adjust Status from Temporary to Permanent Resident	$1,020	$85	$1,105
I-751 Petition to Remove Conditions of Residence	$505	$85	$590
I-817 Application for Family Unity Benefits	$435	$85	$520
I-829 Petition by Entrepreneur to Remove Conditions	$3,750	$85	$3,835
N-400 Application for Naturalization	$595	$85	$680

Table 8 outlines the fees for immigration benefits if Congress does not enact the requested appropriations for SAVE and the Office of Citizenship.

[17] Applicants submitting a Form I–131, Travel Document—Advance Parole, are not required to pay the biometrics fee.

[18] Amerasian applicants are the only class of I–360 applicants required to pay for biometric services.

Table 8 - Fees for Immigration Benefits Requiring Biometric Services if SAVE and Office of Citizenship Appropriations are Not Approved			
Form	**Proposed Fee**	**Proposed Biometric Fee**	**Total Proposed Fee**
I-90 Application to Replace Permanent Resident Card	$365	$85	$450
I-131 Application for Travel Document	$360	$85	$445
I-360 Petition for Amerasian, Widow(er), or Special Immigrant	$405	$85	$490
I-485 Application to Register Permanent Residence or Adjust Status	$1,000	$85	$1,085
I-600/600A, I-800/800A Orphan Petitions	$725	$85	$810
I-687 Application for Status as a Temporary Resident	$1,145	$85	$1,230
I-698 Application to Adjust Status from Temporary to Permanent Resident	$1,035	$85	$1,120
I-751 Petition to Remove Conditions of Residence	$510	$85	$595
I-817 Application for Family Unity Benefits	$440	$85	$525
I-829 Petition by Entrepreneur to Remove Conditions	$3,805	$85	$3,890
N-400 Application for Naturalization	$595	$85	$680

2. Low Volume Reallocation

USCIS is using its fee setting discretion to adjust certain application and petition fees when the low volume that is projected leads to particularly high unit cost increases. USCIS determined in its fee study that the combined effect of cost, revenue estimates, and methodology results in an inordinate fee burden being placed on these requests relative to other benefit requests. For example, without reallocation for an orphan petition, the fee for that form would be $1,455. USCIS believes it would be contrary to the public interest to impose a fee of this size on an estimated 25,000 potential adoptive parents each year. Similar disparate effects occur for all of the form types that are being adjusted using a low volume reallocation. Thus, USCIS has decided, based on its experience in carrying out immigration benefit programs, assessing fees, and the characteristics of various applicants, that reasonable adjustments based on such equitable considerations are justified.

USCIS will therefore limit the fee increase for these forms to an increase equal to the weighted average percentage fee increase of all immigration benefits. The additional costs from these form types are then prorated to other benefits. This same methodology was used effectively in the FY 2008/2009 Fee Rule. 72 FR at 4910. The benefit requests requiring a low volume adjustment for the FY 2010/2011 Fee Rule are:

- Petition for Amerasian, Widow(er), or Special Immigrant (with respect to Form I–360 applicants who are not already exempt from paying the fee);
- Application for Waiver of Grounds of Inadmissibility (Form I–690);
- Application to File Declaration of Intention (Form N–300);
- Application to Preserve Residence for Naturalization Purposes (Form N–470);
- Orphan Petitions (Forms I–600/I–600A and I–800/I–800A,);
- Notice of Appeal or Motion (Form I–290B);
- Request for Hearing on a Decision in Naturalization Proceedings (Form N–336); and
- Waiver Forms (Forms I–191, I–192, I–193, I–212, I–601, I–612).

Public comments would be particularly useful on whether to maintain fees for certain low volume applications and petitions at levels below the ABC model.

3. Application for Naturalization

DHS proposes to provide special consideration to the fee for an Application for Naturalization (Form N–400), by limiting the fee at its current level of $680 ($595 current fee with the $85 biometrics fee). USCIS received many comments on the FY 2008/2009 Fee Rule expressing concern that the N–400 fee had been increased inordinately. 72 FR at 29856.

DHS has determined that the act of requesting and obtaining U.S. citizenship deserves special consideration given the unique nature of this benefit to the individual applicant, the significant public benefit to the Nation, and the Nation's proud tradition of welcoming new citizens. DHS believes this action to retain the naturalization fee at the current level will reinforce these principles, allow more immigrants to fully participate in civic life, and is consistent with other DHS efforts to promote citizenship and immigrant integration.[19] For these reasons, and based on its experience in administering the naturalization program, DHS proposes to retain the fee for naturalization at the current level over the FY 2010/2011 biennial period.

DHS recognizes that limiting the fee at its current level would lead to the subsidization of naturalization by other fee-paying applicants as allowed by INA section 286(m), 8 U.S.C. 1356(m). Charging "other immigrants" who file an Application for Naturalization (Form N–400) less than full cost of adjudicating that petition, or spreading the costs of administration of USCIS more fully among non-naturalization applicants, may be fairly interpreted as providing the naturalization applicants with a part of that service "without charge." As

[19] *See USCIS Office of Citizenship Vision and Mission at http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=a5e314c0cee47210VgnVCM100000082ca60aRCRD&vgnextchannel=a5e314c0cee47210VgnVCM100000082ca60aRCRD.*

discussed in the Authority section of this rule, DHS is proposing to shift this amount to other applicants as part of full cost recovery in compliance with INA section 286(m).

This proposal would result in setting the fee for the Application for Naturalization (Form N–400) at less than what the ABC model generates as the full cost of adjudicating that application. A model-based fee for naturalization would have increased the current fee level by as much as $60 per application. DHS is anticipating receiving an annual volume of 684,390 fee-paying naturalization applications (Form N–400); accordingly, forgoing the $60 fee increase for the Form N–400 thus would reduce fee collections by approximately $41 million, as compared to using the adjusted fee. As a result, retaining the current fee will spread this portion of the cost from naturalization applicants to other applicants and petitioners as part of full cost recovery in implementing INA section 286(m), 8 U.S.C. 1356(m). The estimated fee impact of this policy on other application and petition types is a weighted average of $8.00 per application and petition (*i.e.,* the impact is greater or less than $8.00 for each application and petition, with the weighted average being $8.00). DHS is specifically requesting comments on this policy decision. The comments will be considered in determining whether the final rule provides a fee of $680 as proposed or a higher amount as calculated in the FY 2010/2011 Fee Review using ABC methodology and all other factors that are part of calculations for the final rule.[20] Table 9 illustrates the impact of this proposed policy decision across all fee paying applications and petitions.

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[20] The fees established in the final rule may vary based on cost figures that are current when the final rule is drafted, enacted appropriations, and adjustments made as a result of public comments on all fees, waivers, exemptions, reallocations, and general methodology. Adjustment of one fee will result in changes in the fees for other benefit requests (raising or reducing fees) depending on the action. The effect of a change in one fee on all other fees cannot be precisely stated because of the other adjustments that will be made.

Costs not recovered with respect to immigration benefits for which the fee is set below the ABC model amount are spread to other immigration benefits by the ABC model output amount. First these redistributed costs are added to all non-held immigrant benefits. Then these redistributed costs, as an average, are spread to the fee-paying volume of each of the non-held immigrant benefit fees. This methodology is consistent with the methodology used in the FY 2007 Fee Rule to spread these costs equitably to the benefit instead of applying a fixed "surcharge."

Table 9. Effect of Policy Decision to Retain or Not to Retain Current Naturalization Fee Levels by Immigration Benefit

Immigration Benefit	1. Current Fees	Proposed Fees with President's Requested Appropriation for Asylum / Refugee Surcharge; Military Naturalization; SAVE; and Citizenship;		4. Percentage Change Retaining Current Naturalization Fee 2./1.	5. Percentage Change not Retaining Current Naturalization Fee 3./1.
		2. Retaining Current Naturalization Fees	3. Not Retaining Current Naturalization Fees		
I-90 Application to Replace Permanent Resident Card	$290	$365	$360	26%	24%
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	$320	$330	$320	3%	0%
I-129 Petition for a Nonimmigrant Worker	$320	$325	$320	2%	0%
I-129F Petition for Alien Fiancé(e)	$455	$340	$330	-25%	-27%
I-130 Petition for Alien Relative	$355	$420	$410	18%	15%
I-131 Application for Travel Document	$305	$360	$350	18%	15%
I-140 Immigrant Petition for Alien Worker	$475	$580	$565	22%	19%
I-290B Notice of Appeal or Motion	$585	$630	$630	8%	8%
I-360 Petition for Amerasian, Widow(er), or Special Immigrant	$375	$405	$405	8%	8%
I-485 Application to Register Permanent Residence or Adjust Status	$930	$985	$960	6%	3%
I-526 Immigrant Petition by Alien Entrepreneur	$1,435	$1,500	$1,460	5%	2%
I-539 Application to Extend/Change Nonimmigrant Status	$300	$290	$280	-3%	-7%
I-600/600A, I-800/800A Orphan Petitions	$670	$720	$720	7%	7%
I-687 Application for Status as a Temporary Resident	$710	$1,130	$1,100	59%	55%
I-690 Application for Waiver of Grounds of Inadmissibility	$185	$200	$200	8%	8%
I-694 Notice of Appeal of Decision	$545	$755	$735	39%	35%
I-698 Application to Adjust Status From Temporary to Permanent Resident	$1,370	$1,020	$995	-26%	-27%
I-751 Petition to Remove the Conditions of Residence	$465	$505	$490	9%	5%
I-765 Application for Employment Authorization	$340	$380	$375	12%	10%
I-817 Application for Family Unity Benefits	$440	$435	$425	-1%	-3%
I-824 Application for Action on an Approved Application or Petition	$340	$405	$395	19%	16%
I-829 Petition by Entrepreneur to Remove Conditions	$2,850	$3,750	$3,655	32%	28%
Civil Surgeon Designation Registration	$0	$615	$600	0%	0%
I-924 Application for Regional Center under the Immigrant Investor Pilot Program	$0	$6,230	$6,070	0%	0%
N-300 Application to File Declaration of Intention	$235	$250	$250	6%	6%
N-336 Request for Hearing on a Decision in Naturalization Proceedings	$605	$650	$650	7%	7%
N-400 Application for Naturalization	$595	$595	$655	0%	10%
N-470 Application to Preserve Residence for Naturalization Purposes	$305	$330	$330	8%	8%
N-565 Application for Replacement	$380	$345	$335	-9%	-12%

Table 9. Effect of Policy Decision to Retain or Not to Retain Current Naturalization Fee Levels by Immigration Benefit

Immigration Benefit	1. Current Fees	Proposed Fees with President's Requested Appropriation for Asylum / Refugee Surcharge; Military Naturalization; SAVE; and Citizenship;		4. Percentage Change Retaining Current Naturalization Fee 2./1.	5. Percentage Change not Retaining Current Naturalization Fee 3./1.
		2. Retaining Current Naturalization Fees	3. Not Retaining Current Naturalization Fees		
Naturalization/Citizenship Document					
N-600/N-600K Applications for Certificate of Citizenship	$460	$600	$585	30%	27%
Waiver Forms (I-191, I-192, I-193, I-212, I-601, I-612)	$545	$585	$585	7%	7%
Immigrant Visas	$0	$165	$160	0%	0%
Biometric Services	$80	$85	$85	6%	6%

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B. Key Changes Implemented for the FY 2010/2011 Fee Review

1. Appropriation for Refugee, Asylum, and Military Naturalization Benefits

Fee setting authority for the IEFA provides that fees may be set at a level to fund the full cost of processing immigration benefit requests and the full cost of providing similar benefits to asylum and refugee applicants. INA sec. 286(m); 8 U.S.C. 1356(m). In the FY 2008/2009 Fee Rule, USCIS attached a $72 surcharge to every immigration benefit request representing the cost of workload for asylum and refugee applicants as well as the cost of estimated fee waivers and exemptions. 72 FR 29859. For the fees proposed in this rule, USCIS will exclude the costs incurred for refugee, asylum, and military naturalization workload from the ABC model. Appropriated funding for these purposes was requested and partially approved for FY 2010; additional appropriations to fund operations were requested for FY 2011.

International Operations (IO) processes immigration benefits and petitions, facilitates the international adoption process, and serves the immediate family members of U.S. citizens residing abroad who want to adjust their status. In the FY 2008/2009 Fee Rule, IO's costs were part of the Refugee/Asylum surcharge applied to all fee-paying applications and petitions. In this proposed rule, the portion of IO's budget attributable to processing refugee benefits has been included in the requested appropriation. The remaining costs are included in the IEFA cost baseline and recovered by fee revenue. The portion of IO that processes fee-paying benefits will be funded using IEFA revenue. If the FY 2011 request for appropriated funds is not enacted or enacted at a reduced level, the model will be revised and the final fee structure will reflect the costs of these activities.

2. Fee Waivers and Exemptions

DHS proposes to modify the regulatory language and clarify eligibility for an individual fee waiver in 8 CFR 103.7(c). Where appropriate in the IEFA fee structure, USCIS exempts certain classes of applicants and petitioners from paying fees, and certain applicants may be granted a fee waiver due to verifiable financial hardship. DHS proposes to modify 8 CFR 103.7(c) to list benefit requests for which applicants may request fee waivers.

DHS also proposes to add a new 8 CFR 103.7(d) to provide USCIS with the discretion to approve and revoke exemptions from fees, or provide that the fee may be waived for a case or class of cases that is not otherwise provided in 8 CFR 103.7(c). To exercise this authority, the Director of USCIS must determine that such an exemption or waiver would be in the public interest and the exception is not inconsistent with other applicable law or regulation. DHS proposes that this exception authority will be vested with the Director of USCIS and cannot be delegated to any other official other than his or her deputy. USCIS plans to issue internal guidance that will require requests for a Director's waiver to be sent to the USCIS District Office. The guidance will require the District Office and applicable program directorate to recommend approval, outline the reasons for the recommendation in their transmission of the waiver or exemption request to the Director, and certify that no other law or regulations are violated by granting the waiver or exemption.

In addition, DHS proposes to remove the separate fee waiver provisions that relate to applications for temporary protected status (TPS). *See* 8 CFR 244.20. The applicant must show that he or she is unable to pay the prescribed fees to establish eligibility for a waiver of the fee for an application for TPS. Those requirements differ only slightly from the more general fee waiver eligibility in 8 CFR 103.7(c) and the redundant provisions have been the source of confusion. These proposed modifications ensure that waivers and exemptions are applied in a fair and consistent manner.

3. Immigrant Visa Processing Fee

DHS is proposing to collect a fee for processing immigrant visas. USCIS does not currently recover fees for the cost of processing visas issued overseas by DOS, although USCIS offices expend time and effort to process those visas. This practice is inconsistent with Executive Branch guidance in OMB Circular A–25 to recover the full cost of providing a service to the public. Historically, these costs were carried as overhead and spread across all fee-paying applicants. By not collecting a fee for this service while incurring significant associated costs, USCIS is placing additional burdens on all fee-paying applicants. The fee proposed in this rule for immigrant visas was calculated at the amount necessary to fully recover the costs to USCIS for processing these requests. This new fee will result in a smaller increase in the fees proposed for other benefit requests absent this action.

While USCIS does not adjudicate immigrant visas applications, USCIS resources are required to complete the processing of this benefit when an immigrant visa is granted by a DOS

consular officer. An individual receiving a visa from a DOS consulate overseas receives visa documentation and his or her photograph in a sealed application package. The individual takes the application package with him or her for use at the U.S. port of entry. At the port of entry, a U.S. Customs and Border Protection (CBP) officer will inspect the individual and fill out remaining information and collect remaining application documentation. CBP forwards the immigrant visa package to USCIS for review and entry into USCIS data systems. If a deficiency is found, the visa case is referred to a USCIS District Office for resolution. Typical deficiencies include missing documentation, missing biometric information, unacceptable photographs, and mismatches of admission stamp information. Some of the deficiencies are resolved between USCIS and CBP.

When an immigrant visa is deemed complete and satisfactory, USCIS enters the data; scans photographs, signatures and fingerprints; and issues a permanent resident card. USCIS Service Centers often take inquiries from immigrants until the card is received in the mail. USCIS integrates visa documentation within a central alien file (A–File) and, if none exists, a new A–File is created and stored. Of the nine ABC activities, the following activities apply directly to processing immigrant visas:

• *Intake*—USCIS must receive immigrant visa packets from CBP, perform data entry, and create a file for each individual packet.

• *Review Records*—USCIS must ensure that inter-agency forms that are essential to the immigrant visa process are received from the appropriate source and collated into one A-file. Each immigrant visa application becomes a record that must be stored, retrieved, and archived as needed.

• *Issue Document*—Each approved immigrant visa applicant receives a permanent resident card (green card) created by the USCIS Integrated Document Production office.

• *Inform the Public*—USCIS receives and processes applicant and petitioner service inquiries from immigrant visa applicants related to their permanent resident status.

• *Management and Oversight*—All applications processed by USCIS receive a portion of the cost of high-level leadership and non-adjudicative support from Headquarters offices.

The proposed fee to service each of the immigrant visas and issue a permanent resident card, based on these activities, is $165.

4. EB–5 Regional Center Designation Fee

DHS is proposing an immigrant investor fee for individuals, State or local government agencies, partnerships, or any other business entity requesting approval and designation to be a regional center under the Immigrant Investor Pilot Program (Pilot Program). *See* Public Law 102–395, tit. VI, section 610, 106 Stat. 1874 (1992) (8 U.S.C. 1153 note). This program is distinct in certain ways from the basic EB–5 investor program. Foreign investors are encouraged to invest funds in an economic unit known as a "regional center." A regional center is defined under 8 CFR 204.6(e) to mean any economic unit, public or private, engaged in the promotion of economic growth, improved regional productivity, job creation, and increased domestic capital investment. USCIS regulations establish eligibility criteria for a regional center and the related reporting requirements. 8 CFR 204.6(m)(3). In conjunction with the new fee, the regional center reporting requirements are proposed to be clarified in this rule. The reporting requirements will make it clearer that the designation as a regional center is subject to maintenance of the eligibility requirements, and the provision of reports to USCIS showing continued compliance. Proposed 8 CFR 204.6(m)(6).

The FY 2010/2011 fee study found that USCIS expends a lot of effort to adjudicate a request for designation as an approved EB–5 regional center. These applicants do not pay fees to cover the costs incurred to carry out this program's activities. As a result, the costs of staff and resources necessary to carry out the regional center program have been paid from revenue derived from other applications. In addition to providing a vehicle for fee collection, the standardized "Application for Regional Center under the Immigrant Investor Pilot Program," (Form I–924); will clarify requirements for a regional center document; improve the quality of applications; better document eligibility for the Pilot Program; alleviate content inconsistencies among applicants' submissions; and support a more efficient process for adjudication of applications.

Of the nine ABC activities, the following apply directly to processing applications for Regional Centers:

• *Intake*—USCIS must receive applications from individuals or entities desiring to receive regional center designation, perform data entry, and create a file for each individual packet.

• *Review Records*—USCIS must ensure that evidence essential to the adjudications process is received from the appropriate source and collated into one file. Each application becomes a record that must be stored, retrieved, and archived as needed.

• *Inform the Public*— USCIS receives and processes applicant and petitioner service inquiries from applicants related to the status of their applications.

• *Fraud Prevention and Detection*—The authenticity of each application must be analyzed in order to prevent immigration benefit fraud.

• *Make Determination*—The Regional Center application requires the submission of extensive documentation and statistical data concerning the geographical region the center will affect. Applicants must also provide thorough business plans, analysis of the potential economic impact the center will have, and proof of immigration status for review by USCIS.

• *Management and Oversight*—All applications processed by USCIS receive a portion of the cost of high-level leadership and non-adjudicative support from Headquarters offices.

Based on these activities, a proposed fee of $6,230 has been calculated for servicing these applications. USCIS estimates that it will receive an average of 132 applications for regional centers per year. Based on the experience USCIS has in administering the regional center and EB–5 investor program, and knowledge of the entities that file the typical application, this fee is affordable and it is reasonable to collect it from the affected applicants. For example, a review of investment subscription agreements and limited partnership membership agreements provided in support of recently submitted proposals during the USCIS adjudication process indicates that multiple investors typically paid from $25,000 to $50,000 each for the opportunity to invest in a project, in addition to the minimum investment required by DHS regulations to be a EB–5 investor.[21] Thus, regardless of the low annual volume estimate, no low volume reallocation of the costs of the EB–5 investor program is being proposed. Thus, the fee of $6,230 will be collected from each applicant.

5. Civil Surgeon Program

DHS is proposing a new fee for individuals requesting civil surgeon designation. Civil surgeons are physicians who are authorized to conduct medical examinations that are required of applicants for certain immigration benefits. 42 CFR part 34. *See also* ch. 373, title III, secs. 325, 361, 58 Stat. 697, 703 (Jul. 1, 1944); 42 U.S.C.

[21] *http://www.uscis.gov/eb-5centers.*

252, 264 (requiring the Secretary of HHS to make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States). Section 232(b) of the INA, 8 U.S.C. 1222(b), provides for officers of the United States Public Health Service (USPHS) to conduct physical and mental examinations of arriving aliens. If there are not enough USPHS officers to conduct these examinations, section 232(b) provides for the designation of civilian physicians as "civil surgeons," who are then authorized to conduct the examinations. Under section 451(b) of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, 2195 (2002), the authority to designate civil surgeons transferred on March 1, 2003, from the Attorney General to the Secretary of Homeland Security. 6 U.S.C. 271(b), 557; *see also* 8 CFR part 2.1. The Secretary of Homeland Security has delegated the authority to designate civil surgeons to USCIS. The civil surgeon must conduct all examinations in accordance with Technical Instructions for the Medical Examination of Aliens in the United States, adopted by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services. *See http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/technical-instructions-civil-surgeons.html.* The INA provides that officers of the United States Public Health Service (USPHS) or civil surgeons, when USPHS officers are not available, conduct physical and mental examinations of arriving aliens. INA section 232(b), 8 U.S.C. 1252(b). The civil surgeon designation is required for physicians wishing to conduct physical and mental examinations of those seeking admission into the United States or applying for adjustment of status. *Id.;* 8 CFR 232.2(b). It is currently within the authority of the District Directors to designate civil surgeons for each district. *See* 8 CFR 232.2(b). Currently, USCIS does not recover the costs of granting civil surgeon designation and managing the Civil Surgeon Program. This is inconsistent with OMB Circular A–25 requirements that USCIS recover the full cost of services provided to the public. DHS, therefore, proposes a fee to correct that oversight in this proposed rule.

In the future, the civil surgeon designation process will be standardized. USCIS will develop a standard designation process and form, maintain an accurate, regularly-updated list of civil surgeons, ensure that the program is self-funded, and improve communication between USCIS and civil surgeons. Six of the nine ABC activities apply to the civil surgeon designation process:

- *Intake*—USCIS must receive requests for civil surgeon designation, perform data entry, and create a file for each individual application.
- *Review Records*—USCIS must ensure that evidence essential to the designations process is received from appropriate sources and collated into one file. Each application becomes a record that must be stored, retrieved, and archived as needed.
- *Inform the Public*—USCIS receives and processes applicant and petitioner service inquiries from applicants related to the status of their applications.
- *Fraud Prevention and Detection*—The authenticity of each application must be analyzed in order to prevent potential immigration benefit fraud.
- *Make Determination*—All physicians applying for civil surgeon designation will be vetted for any adverse actions pending against them by the State medical licensing authorities to determine eligibility.
- *Management and Oversight*—All applications processed by USCIS receive a portion of the cost of high-level leadership and non-adjudicative support from Headquarters offices.

The FY 2010/2011 Fee Study calculated the costs of carrying out each of these activities as, respectively, $26, $61, $85, $24, $350, and $69, for a total proposed fee of $615 for this benefit. Doctors who request a civil surgeon designation will add a payment of $615 to the items that are currently required. Since the estimated number of civil surgeon designation requests is only 3,410 per year, the impact of this proposed fee on other fees is negligible. Nevertheless, even though they amount to only $1.9 million per year, these costs should not be covered by other fee payers.

VI. Volume

USCIS uses two types of volume data in the fee review. Workload volume is a projection of the total number of immigration benefit requests received in a fiscal year and is used to determine the amount of resources needed. Fee-paying volume is a projection of how many applicants will pay a fee for a request. Since USCIS may waive the fee or allow an exemption for certain classes of applicants, fee-paying volume is used to determine projected revenue.

- *Workload Volume* is a primary cost driver for assigning processing activity costs to immigration benefit requests in the USCIS activity-based cost model. Workload volume is projected for each immigration benefit by Service Centers, National Benefit Center, and District Offices in order to assign costs where the work is performed, and thus where costs are realized.
- *Fee-paying Volume* is used to calculate proposed fees for immigration benefit requests and biometric services. The fee-paying volume for each form is determined by dividing the actual fee revenues per request in FY 2008 by the FY 2008 fee to determine the fee-paying percentage, and then applying that percentage to projected workload volumes. USCIS adjusts FY 2008 fee-paying volumes to reflect filing trends and anticipated changes in order to project FY 2010/2011 fee-paying volumes.

USCIS projects workload volumes based on filing trends in FY 2009 and projected changes for FY 2010/2011. USCIS also utilizes time series model data from the last 15 years developed by the DHS Office of Immigration Statistics (OIS), as well as the best available internal understanding of future developments. Given the size and scope of current negative economic conditions, historical data may not provide sufficient insight into the likelihood or timing of volume increases or decreases. Consequently, USCIS has taken a conservative approach to workload volume estimates for FY 2010/2011.

USCIS reviews short- and long-term volume trends and assesses OIS trend data with representatives of other affected components of DHS. OIS volume estimates by application or petition type are primarily drawn from time series models. The time series models analyze historical receipts data in order to capture patterns (such as level, trend, and seasonality) or correlations in historical events. These patterns and correlations are then extrapolated into the future in order to derive projected receipts. All of the models capture the behavioral relationships and dependencies of receipts to past values. For example, the models factor in the correlation between the number of pending Form I–485, Application to Register Permanent Residence or Adjustment of Status, and the projected number of receipts for the Form I–765, Application for Employment Authorization, and the Form I–131, Application for Travel Document. DHS, USCIS, and OIS will continue to improve both the estimating process and the basis for specific estimates.

Table 10 summarizes the FY 2008/2009 workload volume and the projected workload volume for FY 2010/

2011 based on trends and projected changes by immigration benefit request. The projected workload volume is used in the cost model to determine request costs. USCIS has experienced a general decrease in volume and expects that trend to continue.

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Table 10 – Workload Volume Comparison

Immigration Benefit	FY 2008/2009 Fee Rule Workload Receipts	FY 2010/2011 Projected Workload Receipts	Delta
I-90 Application to Replace Permanent Resident Card	552,025	540,000	(12,025)
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	24,035	17,165	(6,870)
I-129 Petition for a Nonimmigrant Worker	400,000	395,000	(5,000)
I-129F Petition for Alien Fiancé(e)	66,177	54,000	(12,177)
I-130 Petition for Alien Relative	743,823	690,520	(53,303)
I-131 Application for Travel Document	139,000	256,255	117,255
I-140 Immigrant Petition for Alien Worker	135,000	75,000	(60,000)
I-290B Notice of Appeal or Motion	47,645	28,734	(18,911)
I-360 Petition for Amerasian, Widow(er) or Special Immigrant	16,000	17,669	1,669
I-485 Application to Register Permanent Residence or Adjust Status	613,400	526,000	(87,400)
I-526 Immigrant Petition by Alien Entrepreneur	600	1,399	799
I-539 Application to Extend/Change Nonimmigrant Status	220,000	195,000	(25,000)
I-600/600A; I-800/800A Orphan Petitions	29,601	25,241	(4,360)
I-687 Application for Status as a Temporary Resident	500	48	(452)
I-690 Application for Waiver on Grounds of Inadmissibility	3,293	74	(3,219)
I-694 Notice of Appeal of Decision	3,696	50	(3,646)
I-698 Application to Adjust Status From Temporary to Permanent Resident	494	704	210
I-751 Petition to Remove the Conditions of Residence	143,000	183,000	40,000
I-765 Application for Employment Authorization	983,000	720,000	(263,000)
I-817 Application for Family Unity Benefits	5,762	1,750	(4,012)
I-824 Application for Action on an Approved Application or Petition	40,785	20,961	(19,824)
I-829 Petition by Entrepreneur to Remove Conditions	88	441	353
Civil Surgeon Request	N/A	3,410	N/A

Table 10 – Workload Volume Comparison			
Immigration Benefit	**FY 2008/2009 Fee Rule Workload Receipts**	**FY 2010/2011 Projected Workload Receipts**	**Delta**
I-924 Application for Regional Center Under the Immigrant Investor Pilot Program	N/A	132	N/A
N-300 Application to File Declaration of Intention	100	45	(55)
N-336 Request for Hearing on a Decision in Naturalization Proceedings	14,000	4,145	(9,855)
N-400 Application for Naturalization	734,716	693,890	(40,826)
N-470 Application to Preserve Residence for Naturalization Purposes	669	621	(48)
N-565 Application for Replacement Naturalization / Citizenship Document	32,000	29,298	(2,702)
N-600/600K Naturalization Certificate Applications	64,711	45,347	(19,364)
Waiver Forms (I-191, I-192, I-193, I-212, I-601, I-612)	45,459	31,432	(14,027)
Immigrant Visa	N/A	215,000	N/A
Total	**5,059,635**	**4,772,331**	**(505,846)**
Biometrics	3,154,330	2,048,177	(1,106,153)
Grand Totals	**8,213,965**	**6,820,509**	**(1,611,999)**

The projected fee-paying volume is used to determine immigration benefit and biometric service unit costs and ultimately the proposed fees. A comparison of 2008/2009 Fee Rule fee-paying volume to projected 2010/2011 fee-paying volume, along with the difference between the two, is outlined in Table 11.

Table 11 – Fee-Paying Volume Comparison			
Immigration Benefit	**FY 2008/2009 Fee Rule Fee Paying Receipts**	**FY 2010/2011 Projected Fee Paying Receipts**	**Delta**
I-90 Application to Replace Permanent Resident Card	510,405	518,400	7,995
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	22,382	17,165	(5,217)
I-129 Petition for a Nonimmigrant Worker	399,757	395,000	(4,757)
I-129F Petition for Alien Fiance(e)	44,731	39,960	(4,771)
I-130 Petition for Alien Relative	740,552	690,520	(50,032)
I-131 Application for Travel Document	132,168	192,255	60,087
I-140 Immigrant Petition for Alien Worker	129,743	75,000	(54,743)
I-290B Notice of Appeal or Motion	47,645	28,734	(18,911)
I-360 Petition for Amerasian, Widow(er) or Special Immigrant	4,772	6,957	2,185
I-485 Application to Register Permanent Residence or Adjust Status	555,010	480,000	(75,010)
I-526 Immigrant Petition by Alien Entrepreneur	600	1,343	743
I-539 Application to Extend/Change Nonimmigrant Status	215,629	195,000	(20,629)
I-600/600A; I-800/800A Orphan Petitions	29,260	16,211	(13,049)
I-687 Application for Status as a Temporary Resident	500	43	(457)
I-690 Application for Waiver on Grounds of Inadmissibility	3,293	74	(3,219)
I-694 Notice of Appeal of Decision	3,696	50	(3,646)
I-698 Application to Adjust Status From Temporary to Permanent Resident	331	605	274
I-751 Petition to Remove the Conditions of Residence	130,169	177,510	47,341
I-765 Application for Employment Authorization	859,543	511,200	(348,343)
I-817 Application for Family Unity Benefits	5,762	1,750	(4,012)
I-824 Application for Action on an Approved Application or Petition	40,231	20,961	(19,270)
I-829 Petition by Entrepreneur to Remove Conditions	45	256	211
Civil Surgeon Request	N/A	3,410	N/A
I-924 Application for Regional Center Under the Immigrant Investor Pilot Program	N/A	132	N/A
N-300 Application to File Declaration of Intention	92	45	(47)
N-336 Request for Hearing on a Decision in Naturalization Proceedings	13,948	4,145	(9,803)
N-400 Application for Naturalization	710,461	684,390	(26,071)
N-470 Application to Preserve Residence for Naturalization purposes	669	621	(48)
N-565 Application for Replacement Naturalization/Citizenship Document	30,741	24,903	(5,838)
N-600/600K Naturalization Certificate Applications	64,711	45,347	(19,364)

Table 11 – Fee-Paying Volume Comparison			
Immigration Benefit	**FY 2008/2009 Fee Rule Fee Paying Receipts**	**FY 2010/2011 Projected Fee Paying Receipts**	**Delta**
Waiver Forms (I-191, I-192, I-193, I-212, I-601, I-612)	45,459	31,432	(14,027)
Immigrant Visa	N/A	215,000	N/A
Total	**4,742,357**	**4,378,419**	**(582,480)**
Biometrics	2,195,812	1,950,603	(245,209)
Grand Totals	**6,938,169**	**6,329,022**	**(827,689)**

VII. Completion Rates

USCIS uses completion rates, reflective of Immigration Services Officer (ISO) hours per completion, to identify the adjudicative time required to complete specific benefit requests from receipt to final disposition. The rate for each benefit request represents an average, as each case is different and some cases are more complex than others. Completion rates reflect what is termed "touch time," or the time the ISO is actually handling the case. It is not reflective of "queue time," or time spent waiting, for example, for additional information or supervisory approval. Nor does it reflect the total time applicants and petitioners can expect to await a decision on their cases once they are received by USCIS.

All ISOs are required to report completion rate information. In addition to using this data to determine fees, completion rates are a key factor in determining staffing allocations to match resources and workload. For this reason, data reported are scrutinized by field and regional office management officials, and by the Production Management Branch (PMB) at USCIS headquarters to ensure data accuracy. When the data are found to be inconsistent with other offices or with prior reported data, the PMB contacts the reporting office and makes any necessary adjustments. Completion rates, reflected in terms of hours per completion, are summarized in Table 12. Completion rates are calculated using data for the 12-month period of May 2008 through April 2009. While more recent rates are available, USCIS believes that the rates utilized for the rule best reflect actual work times. More recent rates that have not had sufficient review and analysis and may reflect near-term trends and work fluctuations that could skew model outcomes.

Table 12 - Completion Rates by Location and Immigration Benefit [22]
(Adjudicative Work Hours)

Immigration Benefit	Service Centers	National Benefits Center	District Offices	Service-Wide
I-90 Application to Replace Permanent Resident Card [23]	0.22	0.22	0.22	0.22
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	0.32	0.66	0.87	0.36
I-129 Petition for a Nonimmigrant Worker	0.51	N/A	0.15	0.51
I-129F Petition for Alien Fiancé(e)	0.40	1.06	1.71	0.41
I-130 Petition for Alien Relative	0.44	0.82	1.14	0.62
I-131 Application for Travel Document	0.15	0.13	0.61	0.16
I-140 Immigrant Petition for Alien Worker	1.13	N/A	2.25	1.13
I-290B Notice of Appeal or Motion [24]	0.75	1.18	1.87	1.11
I-360 Petition for Amerasian, Widow(er) or Special Immigrant	2.48	N/A	1.42	2.39
I-485 Application to Register Permanent Residence or Adjust Status	1.01	3.66	1.49	1.27
I-526 Immigrant Petition by Alien Entrepreneur	5.03	N/A	5.33	5.03
I-539 Application to Extend/Change Nonimmigrant Status	0.35	0.32	1.52	0.35
I-600/600A; I-800/800A Orphan Petitions	N/A	4.78	1.45	1.81
I-687 Application for Status as a Temporary Resident	2.04	0.34	3.27	2.20
I-690 Application for Waiver on Grounds of Inadmissibility	1.40	2.99	1.70	2.59
I-694 Notice of Appeal of Decision	0.97	1.83	1.84	1.60
I-698 Application to Adjust Status From Temporary to Permanent Resident	1.96	0.69	2.13	1.77
I-751 Petition to Remove the Conditions of Residence	0.63	N/A	1.96	0.77
I-765 Application for Employment Authorization	0.13	0.16	0.49	0.14
I-817 Application for Family Unity Benefits	0.63	0.67	1.59	0.64
I-824 Application for Action on an Approved Application or Petition	0.53	0.95	0.99	0.58
I-829 Petition by Entrepreneur to Remove Conditions	5.90	N/A	7.20	5.98
Civil Surgeon Designation	N/A	1.12	N/A	1.12
I-924 Application for Regional Center under the Immigrant Investor Pilot Program	37.33	N/A	N/A	37.33
N-300 Application to File Declaration of Intention	N/A	N/A	1.84	1.84
N-336 Request for Hearing on a Decision in Naturalization Proceedings	N/A	N/A	1.60	1.60
N-400 Application for Naturalization	9.07	3.58	1.05	1.08
N-470 Application to Preserve Residence for Naturalization Purposes	30.80	N/A	1.54	1.75
N-565 Application for Replacement Naturalization/Citizenship Document	0.33	N/A	0.96	0.36
N-600/N-600K Naturalization Certificate Applications	0.88	N/A	0.90	0.90
Waiver Forms (I-191, I-192, I-193, I-212, I-601, I-612)	0.67	0.71	2.11	1.42

[22] Completion rates are calculated using data for the 12-month period of May 2008 through April 2009.

[23] Due to substantial changes in the business processes used to adjudicate the I–90, the completion rate is the 3-year service-wide average from May 2006 through April 2009.

[24] Data for the I–290B was not collected until October 2008, therefore the completion rate time period is the 7-month period of October 2008 through April 2009.

Completion rates for the following immigration benefits are not utilized, due to the special nature of their processing or because there is no fee for the application:

- Application for Posthumous Citizenship (Form N–644); Refugee/Asylee Relative Petition (Form I–730); Application for T Nonimmigrant Status (Form I–914); and, Petition for U Nonimmigrant Status (Form I–918). Applicants for these form types are exempt from paying a fee.
- Biometric Services (processed by the Application Support Centers) are not included for each request type because specific costs can be directly assigned to these services. Factors of volume and completion rates are not necessary to assign processing costs to this product.
- Application for Temporary Protected Status (Form I–821) and Application for Suspension of Deportation or Special Rule Cancellation of Removal (Form I–881) are not included because these programs are temporary and USCIS does not assume their revenue streams will continue.
- The activities associated with processing immigrant visa packages do not include adjudicative hours and costs are driven by volume only.

VIII. Proposed Fee Adjustments

USCIS costs exceed projected revenue by an average of $214 million each year, even after cuts in operations based on, among other things, reduced workload and appropriations for asylum, refugee, SAVE, the Office of Citizenship, and military naturalizations are taken into account. While USCIS has taken action to minimize or decrease its operating costs, the current deficit is too large to close using cost cutting measures alone without a drastically negative impact on service. USCIS must adjust the fee schedule to recover the full cost of processing immigration benefits, and to continue to maintain current service delivery standards.

A. Proposed Adjustments to IEFA Immigration Benefits

After resource costs are identified, they are distributed to USCIS's primary processing activities in the ABC model. This process was more completely described in section V. Table 13 outlines total IEFA costs by activity.

Table 13 – Summary of FY 2010/2011 IEFA Account Costs by Activity with Appropriations for SAVE and Office of Citizenship
(Dollars in Thousands)

Activity	FY 2010	FY 2011	FY 2010/2011
Management and Oversight	$315,939	$301,912	$308,925
Inform the Public	$205,997	$199,735	$202,866
Intake	$114,987	$114,634	$114,811
Capture Biometrics	$167,696	$167,782	$167,739
Conduct IBIS Check	$81,392	$74,672	$78,032
Review Records	$226,413	$224,592	$225,502
Fraud Detection and Prevention	$102,955	$101,934	$102,445
Make Determination	$1,071,270	$983,220	$1,027,245
Issue Document	$43,029	$42,972	$43,001
Total IEFA Costs	**$2,329,678**	**$2,211,454**	**$2,270,566**

Table 14 outlines IEFA costs by activity if FY 2011 appropriations for SAVE and Office of Citizenship are not approved. As noted previously, if appropriations differ from requested amounts, these costs must be recovered from fees.

Table 14 – Summary of FY 2010/2011 IEFA Account Costs by Activity without Appropriations for SAVE and Office of Citizenship
(Dollars in Thousands)

Activity	FY 2010	FY 2011	FY 2010/2011
Management and Oversight	$315,939	$307,715	$311,827
Inform the Public	$205,997	$203,291	$204,644
Intake	$114,987	$114,827	$114,907
Capture Biometrics	$167,696	$168,542	$168,119
Conduct IBIS Check	$81,392	$76,272	$78,832
Review Records	$226,413	$226,427	$226,420
Fraud Detection and Prevention	$102,955	$101,842	$102,399
Make Determination	$1,071,270	$1,004,330	$1,037,800
Issue Document	$43,029	$34,310	$38,670
Total IEFA Costs	**$2,329,678**	**$2,237,556**	**$2,283,617**

The activity costs are then distributed to the applications. Table 15 summarizes total revenue by immigration benefit request.

Table 15 – Total Revenue per Immigration Benefit
(Dollars in Thousands)

Immigration Benefit	Revenue Total with SAVE and Citizenship Appropriations	Revenue Total without SAVE and Citizenship Appropriations	Delta
I-90 Application to Replace Permanent Resident Card	$190,306	$189,505	($801)
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	$5,644	$5,713	$69
I-129 Petition for a Nonimmigrant Worker	$128,974	$130,290	$1,316
I-129F Petition for Alien Fiancé(e)	$13,525	$13,643	$119
I-130 Petition for Alien Relative	$289,953	$292,958	$3,005
I-131 Application for Travel Document	$69,206	$69,364	$158
I-140 Immigrant Petition for Alien Worker	$43,467	$44,031	$564
I-290B Notice of Appeal or Motion	$18,051	$18,163	$112
I-360 Petition for Amerasian, Widow(er) or Special Immigrant	$2,802	$2,819	$17
I-485 Application to Register Permanent Residence or Adjust Status	$473,700	$479,339	$5,638
I-526 Immigrant Petition by Alien Entrepreneur	$2,013	$2,042	$30
I-539 Application to Extend/Change Nonimmigrant Status	$56,496	$57,040	$544
I-600/600A; I-800/800A Orphan Petitions	$11,664	$11,736	$72
I-687 Application for Status as a Temporary Resident[25]	$49	$49	$1
I-690 Application for Waiver on Grounds of Inadmissibility	$15	$15	$0
I-694 Notice of Appeal of Decision	$38	$39	$1
I-698 Application to Adjust Status From Temporary to Permanent Resident	$617	$625	$8
I-751 Petition to Remove the Conditions of Residence	$89,585	$90,286	$701
I-765 Application for Employment Authorization	$195,322	$195,994	$672
I-817 Application for Family Unity Benefits	$766	$772	$7
I-824 Application for Action on an Approved Application or Petition	$8,506	$8,615	$109
I-829 Petition by Entrepreneur to Remove Conditions	$959	$973	$14
Civil Surgeon Designation	$711	$719	$9
I-924 Application for Regional Center under the Immigrant Investor Pilot Program	$822	$834	$12
N-300 Application to File Declaration of Intention	$11	$11	$0
N-336 Request for Hearing on a Decision in Naturalization Proceedings	$2,693	$2,710	$17
N-400 Application for Naturalization	$407,212	$407,212	$0
N-470 Application to Preserve Residence for Naturalization Purposes	$203	$205	$1
N-565 Application for Replacement Naturalization/Citizenship Document	$8,583	$8,779	$196
N-600/N-600K Applications for Certificate of Citizenship	$27,114	$27,609	$495
Waiver Forms (I-191, I-192, I-193, I-212, I-601, I-612)	$18,396	$18,510	$114
Immigrant Visa	$35,431	$34,892	($539)
Biometric Services	$167,732	$168,122	$390
Grand Total	**$2,270,566**	**$2,283,617**	**$13,051**

[25] The Form I–687 was temporarily available only for Legalization Applications Pursuant to the Northwest Immigrant Rights Project (NWIRP) Settlement Agreement. Filing period ended Jan. 31, 2010.

Finally, consolidating the budget realignment proposed in the President's budget and this rule, Table 16 depicts the current and proposed USCIS fees for immigration benefits and biometric services. This proposed fee schedule is based on the President's requested appropriation to fund the Asylum/Refugee surcharge and for SAVE and Office of Citizenship being enacted into law. In some applications, DHS proposes to reduce the fees and fee increases are mitigated by the President's requested appropriation; in those applications where a fee reduction is proposed, the President's requested appropriation would further reduce that fee. In one instance, the Application To Extend/Change Nonimmigrant Status (Form I–539), the President's requested appropriation would alter a 2% increase in the modeled fee to a 5% decrease in fee. If a different appropriation is enacted, the final rule will adjust the fee schedule to accommodate the appropriated funding.

Table 16 - Fees by Immigration Benefit Proposed with and without Requested Appropriations.

Immigration Benefit	1. Current Fees	2. ABC Model Fees with No Appropriation	3. Delta 2. / 1.	4. Proposed Fees with President's Requested Appropriation for Asylum / Refugee Surcharge; Military Naturalization; SAVE; and Citizenship	5. Delta 4. / 1.	6. Percentage Change without Appro-priations 2. / 1.	7. Percentage Change With President's Requested Appropriations 4. / 1.
I-90 Application to Replace Permanent Resident Card	$290	$390	$100	$365	$75	34%	26%
I-102 Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	$320	$360	$40	$330	$10	13%	3%
I-129 Petition for a Nonimmigrant Worker	$320	$355	$35	$325	$5	11%	2%
I-129F Petition for Alien Fiancé(e)	$455	$365	($90)	$340	($115)	-20%	-25%
I-130 Petition for Alien Relative	$355	$460	$105	$420	$65	30%	18%
I-131 Application for Travel Document	$305	$390	$85	$360	$55	28%	18%
I-140 Immigrant Petition for Alien Worker	$475	$630	$155	$580	$105	33%	22%
I-290B Notice of Appeal or Motion	$585	$645	$60	$630	$45	10%	8%
I-360 Petition for Amerasian, Widow(er), or Special Immigrant	$375	$410	$35	$405	$30	9%	8%
I-485 Application to Register Permanent Residence or Adjust Status	$930	$1,075	$145	$985	$55	16%	6%
I-526 Immigrant Petition by Alien Entrepreneur	$1,435	$1,635	$200	$1,500	$65	14%	5%
I-539 Application to Extend/Change Nonimmigrant Status	$300	$315	$15	$290	($10)	5%	-3%
I-600/600A, I-800/800A Orphan Petitions	$670	$735	$65	$720	$50	10%	7%
I-687 Application for Status as a Temporary Resident	$710	$1,235	$525	$1,130	$420	74%	59%
I-690 Application for Waiver of Grounds of Inadmissibility	$185	$205	$20	$200	$15	11%	8%
I-694 Notice of Appeal of Decision	$545	$860	$315	$755	$210	58%	39%
I-698 Application to Adjust Status From Temporary to Permanent Resident	$1,370	$1,115	($255)	$1,020	($350)	-19%	-26%
I-751 Petition to Remove the Conditions of Residence	$465	$550	$85	$505	$40	18%	9%
I-765 Application for Employment Authorization	$340	$415	$75	$380	$40	22%	12%
I-817 Application for Family Unity Benefits	$440	$475	$35	$435	($5)	8%	-1%
I-824 Application for Action on an Approved Application or Petition	$340	$440	$100	$405	$65	29%	19%
I-829 Petition by Entrepreneur to Remove Conditions	$2,850	$4,080	$1,230	$3,750	$900	43%	32%
Civil Surgeon Designation Registration	$0	$665	$665	$615	$615	0%	0%
I-924 Application for Regional Center under the Immigrant Investor Pilot Program	$0	$6,820	$6,820	$6,230	$6,230	0%	0%
N-300 Application to File Declaration of Intention	$235	$260	$25	$250	$15	11%	6%
N-336 Request for Hearing on a Decision in Naturalization Proceedings	$605	$665	$60	$650	$45	10%	7%
N-400 Application for Naturalization	$595	$595	$0	$595	$0	0%	0%
N-470 Application to Preserve Residence for Naturalization Purposes	$305	$335	$30	$330	$25	10%	8%
N-565 Application for Replacement Naturalization/Citizenship Document	$380	$380	$0	$345	($35)	0%	-9%
N-600/N-600K Applications for Certificate of Citizenship	$460	$655	$195	$600	$140	42%	30%
Waiver Forms (I-191, I-192, I-193, I-212, I-601, I-612)	$545	$600	$55	$585	$40	10%	7%
Immigrant Visas	$0	$180	$180	$165	$165	0%	0%
Biometric Services	$80	$85	$5	$85	$5	6%	6%

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B. Proposed Adjustments to Premium Processing Fee

The Immigration and Nationality Act permits certain employment-based immigration benefit applicants to request, for a fee, premium processing. INA sec. 286(u), 8 U.S.C. 1356(u). The premium processing fee is paid in addition to the base filing fee. Premium processing guarantees that USCIS will process an application within fifteen days. *Id;* 8 CFR 103.2(f). The Act provides that premium processing revenue shall be used to fund the cost of offering the service, as well as the cost of infrastructure improvements in adjudications and customer service processes.[26] *Id.* USCIS, therefore, segregates revenue from the premium processing and dedicates it to transitioning USCIS from a paper-based operational environment to a paperless electronic case management environment.[27] This program is an extensive, multi-year effort, estimated for completion over a five-year period. Unlike previous efforts to modernize USCIS, however, the Transformation program will implement near-term improvements as they are developed, allowing USCIS and its customers to benefit more quickly with improved service. Transformation will comprehensively touch every aspect of USCIS business operations such as information collection, storage, and data sharing; customer service and support, adjudicatory processes; staff roles and responsibilities; and information technology.

Transforming USCIS systems from paper to electronic is crucial to the success of improving immigration services. The current business model and supporting systems cannot meet anticipated demand and unanticipated workload surges. Among many improvements, after the transformation initiative is completed, USCIS expects much greater utilization of the electronic submission of applications and supporting documentation. Applicants and petitioners will be able to establish online accounts, track activity on their cases, update personal profiles, and will no longer need to resubmit duplicative biometric and biographic information when applying for future benefits.

DHS proposes to adjust the premium processing fee by the percentage increase in inflation according to the Consumer Price Index (CPI) since the fee's inception. The CPI is issued by the Department of Labor's Bureau of Labor Statistics (BLS) and can found at *http://www.bls.gov/cpi/cpi_dr.htm.* In December 2000, Congress authorized the collection of a premium processing fee in the amount of $1,000.[28] INA sec. 286(u); 8 U.S.C. 1356(u). Although the law provides USCIS with explicit authority to adjust the fee for inflation based on the CPI, USCIS has not adjusted the fee since its inception in 2001. This adjustment was recently recommended by the Government Accountability Office. Government Accountability Office, *Federal User Fees,* GAO–09–180 (Jan. 2009).[29] Therefore, DHS proposes to increase the premium processing fee by applying the inflation rate since the fee's inception in June 2001 until the date of publication of a final rule. For illustrative purposes, the proposed rule uses the September 2009 CPI.

USCIS uses the CPI for all urban consumers (CPI–U) because it is the primary CPI measure. The CPI–U covers approximately 87 percent of the total population.[30] In June 2001, the CPI for all urban consumers was 178.0. In March 2010, the CPI–U was 217.631. The 22 percent increase to the CPI–U applied to the $1,000 fee results in a fee of $1,223 ($1,225 after it is rounded to the nearest $5). This calculation results in a proposed increase in the premium processing fee of $225. The final fee could be different from this proposed amount, because the CPI–U, upon which the fee adjustment is based, varies monthly; however, the final fee rule will be based upon the same methodology. The final rule will establish an amount based upon the latest published monthly CPI before the final rule publication. DHS also proposes to specify that USCIS will use the CPI–U to calculate all future inflation-based fee adjustments and will publish a Notice in the **Federal Register** annually (if applicable) to adjust this fee. *See* Proposed 8 CFR 103.7(b).

C. Removal of Fees Based on Form Numbers

Historically, USCIS has depended on paper files, which can make it difficult to efficiently process immigration benefits. As discussed above, USCIS is modernizing its processes and systems to accommodate and encourage greater use of electronic data submission to include e-filing and electronic interaction. Although it is possible some applicants and petitioners may still choose to file paper forms, USCIS plans to encourage electronic filing. USCIS will continue to describe form names, numbers and filing instructions on its Internet Web site and public information phone scripts; however, USCIS may change form numbers as processes evolve.

To avoid prescribing fees in a manner that could undermine the transformation process, DHS proposes fees based on form titles instead of form numbers. Proposed 8 CFR 103.7(b)(1). Although the current form number is included in the text of the regulation for each fee, introductory text is proposed that will allow the form number to change without affecting the fee. *See* Proposed 8 CFR 103.7(b).

As stated previously, current USCIS form fees and those proposed in this rule are based on the average adjudication costs derived from the ABC model. Many forms are used to request a wide variety of benefits for which the evidentiary and adjudication requirements can be quite disparate. For example, Form I–129, Petition for Nonimmigrant Worker, is used for employers to petition for an alien to come to the United States as an H–1B, H–1C, H–2A, H–2B, H–3, L–1, O–1, O–2, P–1, P–1S, P–2, P–2S, P–3, P–3S, Q–1, or R–1 nonimmigrant worker. Employers may also use this form to

[26] In the June 2007 Annual Report to Congress, the USCIS Ombudsman stated that "premium processing is less costly than regular USCIS benefits processing because fewer repeat steps are necessary, fewer employees must handle these applications, and delayed processing inquiries are eliminated. USCIS has not provided any credible data to the contrary. The margin of income that USCIS can derive from premium processing is higher than from regular processing." and made the recommendation that "USCIS conduct a thorough, transparent, and independent analysis of premium processing costs as compared with regular processing." Citizenship and Immigration Services Ombudsman, *Annual Report to Congress,* June 2007, (Recommendation AR 2007–07). A subsequent review by the GAO, *Immigration Application Fees: Costing Methodology Improvements Would Provide More Reliable Basis for Setting Fees* (GAO–09–70, Jan. 23, 2009), suggested that a decision to dedicate all premium revenues to transformation may create inequities where persons not paying for premium processing service still pay the cost of premium processing operations. While the substance of the reports addresses two separate matters, the unified concern is that undue cost and fee burdens are being placed on persons who do not receive premium processing services. Preliminary analysis of premium processing costs indicates that the marginal increase in cost of premium processing operations apart from regular processing is small.

[27] USCIS separately tracks, from an accounting standpoint, revenue receipts from each unique source (such as each application type) including premium processing. All Immigration Examinations Fee Account (IEFA) revenue is, however, deposited into a single account including premium processing fees, and all expenditures are made from this single unified account without separate tracking of spending tied to the specific fees. Ultimately, there is no direct, per dollar, matching of premium processing receipts used to fund adjudication costs, expenditures for infrastructure improvements, or USCIS operating expenses.

[28] Public Law 106–553, App. B, tit. I, sec. 112, 114 Stat. 2762, 2762A–68 (Dec. 21, 2000).

[29] *http://www.gao.gov/new.items/d09180.pdf.*

[30] Consumer Price Index Overview. Bureau of Labor Statistics, Dec. 09, 2009. *http://www.bls.gov/cpi/cpiovrvw.htm#item1.*

request an extension of stay or change of status for an alien as an E–1, E–2, or TN nonimmigrant. The complexity of the evidence required to document eligibility for each of the respective visas varies to some degree based on factors too numerous to outline here. For another example, Form I–360, Petition for Amerasian, Widow(er), or Special Immigrant, is used to classify an alien as: (1) An Amerasian; (2) A Widow or Widower; (3) A Battered or Abused Spouse or Child of a U.S. Citizen or Lawful Permanent Resident; or (4) A special immigrant defined as: A Religious Worker, Panama Canal Company Employee, Canal Zone Government Employee, U.S. Government in the Canal Zone Employee; Physician; International Organization Employee or Family Member; Juvenile Court Dependent; Armed Forces Member; Afghanistan or Iraqi national who supported the U.S. Armed Forces as a translator; or an Iraqi national who worked for, or on behalf of, the U.S. Government in Iraq. Several other examples exist. Future fee reviews may explore establishing the fee schedule with an even wider range of discrete fees than provided in this rule to more closely align the level of effort expended or required to the fee. As an initial step toward such refinement, this rule, by not proposing to promulgate fees based on a precise form number, will allow that form number to be changed as part of the initial phases of the transformation process.

To further facilitate USCIS transformation, 8 CFR 103.7(b) is being restructured to clarify those fees that apply only to USCIS. DHS regulations contain provisions that to varying degrees govern facets of all of the immigration components of DHS—USCBP, USCIS and U.S. Immigration and Customs Enforcement (ICE). This rule applies only to USCIS. DHS will divide 8 CFR 103.7(b)(1) into separate regulatory provisions containing those fees that are managed by USCIS only and those that are shared with or managed by another immigration-related component of DHS. Further, 8 CFR 103.7(c) regarding fee waivers is restructured to list fees that can be waived, rather than those that cannot be waived, and moves the provisions of 8 CFR 103.7(c)(1) into more coherent paragraphs. In addition, the current requirement for an "unsworn declaration" in 8 CFR 103.7(c) is overly technical for an individual who may qualify for a fee waiver and that requirement is proposed to be removed. Beyond the restructuring of 8 CFR 103.7(b) and (c), however, DHS does not propose to change any authority other than that of USCIS in any context. While DHS believes these structural changes will clarify fee waiver policies, DHS specifically requests comments on any unintended substantive effects. Finally, DHS proposes to redesignate and revise 8 CFR 103.7(d) to remove extraneous language, outdated terminology and excessive, internal, procedural detail.

D. Collection of Biometrics Fees Overseas

DHS proposes to remove the provision in current regulations that exempts individuals who require fingerprinting and who reside outside of the United States at the time of filing an immigration benefit request from the requirement to submit the service fee for fingerprinting with the application or petition for immigration benefits. *See* current 8 CFR 103.2(e)(4)(ii). USCIS expects to collect biometrics from an increasing number of overseas residents in order to comply with the Adam Walsh Child Protection and Safety Act of 2006, which restricts the ability of any U.S. citizen or lawful permanent resident alien who has been convicted of any "specified offense against a minor" to file certain family-based immigration petitions, unless USCIS determines that the petitioner poses no risk to the intended beneficiaries of the petition. Public Law 109–248, secs. 402(a) and (b), 120 Stat. 587, 622 (2006). Moreover, USCIS believes that overseas residents can or should be required to pay fees commensurate with the services being provided. The cost of conducting biometrics overseas should not be borne by other applicants. Thus, DHS proposes to eliminate this exemption. Projected biometric volumes for the FY 2010/2011 fee review include overseas volumes.

IX. Statutory and Regulatory Reviews

A. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA), 5 U.S.C. 601(6), USCIS examined the impact of this rule on small entities. A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act, 15 U.S.C. 632), a small not-for-profit organization, or a small governmental jurisdiction (locality with fewer than fifty thousand people). Below is a summary of the small entity analysis. A more detailed analysis is available in the rulemaking docket at *http://www.regulations.gov.*

Individuals rather than small entities submit the majority of immigration and naturalization benefit applications and petitions. Entities that would be affected by this rule are those that file and pay the alien's fees for certain immigration benefit applications. Consequently, there are four categories of USCIS benefits that are subject to a RFA analysis for this rule: Petition for a Nonimmigrant Worker (Form I–129); Immigrant Petition for an Alien Worker (Form I–140); Civil Surgeon Designation; and the new Application for Regional Center under the Immigrant Investor Pilot Program (Form I–924).

DHS does not believe that the increase in fees proposed in this rule will have a significant economic impact on a substantial number of small entities. Nevertheless, DHS is publishing this initial regulatory flexibility analysis to aid the public in commenting on the small entity impact of its proposed adjustment to the USCIS Fee Schedule. In particular, DHS requests information and data that would lead the agency to a different conclusion. DHS also seeks comment on significant alternatives that accomplish the objectives of this rulemaking and that minimize the rule's economic impact on small entities.

1. A Description of the Reasons Why the Action by the Agency Is Being Considered

DHS proposes to adjust certain immigration and naturalization benefit fees charged by USCIS. USCIS has refined its cost accounting process and determined that current fees do not recover the full costs of services provided. Adjustment to the fee schedule is necessary to recover costs and maintain adequate service.

2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

DHS's objectives and legal authority for this proposed rule are discussed in section II of this preamble.

3. A Description—and, Where Feasible, an Estimate of the Number—of Small Entities to Which the Proposed Rule Will Apply

Entities affected by this rule are those that file and pay fees for certain immigration benefit applications on behalf of an alien. These applications include Form I–129 (Petition for Nonimmigrant Worker), Form I–140 (Immigrant Petition for Alien Worker), Civil Surgeon Designation, and Form I–924 (Application for Regional Center). Annual numeric estimates of the small entities impacted by this fee increase total: Form I–129 (87,220 entities), Form

I–140 (44,500 entities), Civil Surgeon Designation (1,200 entities), and Form I–924 (132 entities).

This rule applies to small entities, including businesses, non-profit organizations, and governmental jurisdictions filing for the above benefits. Forms I–129 and I–140, will see a number of industry clusters impacted by this rule (*see* Appendix A of the Small Entity Analysis for a list of impacted industry codes). The fee for Civil Surgeon designation will impact physicians seeking to be designated as a Civil Surgeon. Finally, the Form I–924, will impact any entity requesting approval and designation to be a Regional Center under the Immigrant Investor Pilot Program.

(a) Petition for a Nonimmigrant Worker (Form I–129) and Immigrant Petition for an Alien Worker (Form I–140)

USCIS proposes to increase the fee for Petition for a Nonimmigrant Worker (Form I–129) from $320 to $325, a $5 (1.5%) increase. USCIS proposes to increase the fee for Immigrant Petition for an Alien Worker (Form I–140) from $475 to $580, a $105 (22%) increase. In order not to underestimate the economic impact of this proposed rule on small entities, this analysis uses a fee structure based on fees without including appropriated funds. Therefore, the fees analyzed here are Form I–129 at $355 ($35 increase) and Form I–140 at $630 ($155 increase).

Using fiscal year 2008 data on actual filings of Form I–129 and I–140 petitions, USCIS collected internal data for each filing organization including the name, Employer Identification Number (EIN), city, State, zip code, and number/type of filings. Each entity may make multiple filings; for instance, there were 525,709 I–129 and I–140 petitions, but only 148,289 unique entities.

Since the filing statistics do not contain information such as the revenue of the business, a third party source of data was necessary to help find this information. USCIS utilized the comprehensive online database from Reference USA to help determine an organization's small entity status and then applied SBA guidelines to the entities under analysis.[31]

USCIS devised a methodology to conduct the small entity analysis based on a representative sample of the potentially impacted population. To achieve a 95% confidence level and a 5% confidence interval on a population of 148,289 entities, USCIS used the standard statistical formula to determine a minimum sample size of 383 entities was necessary.

USCIS conducted searches on 891 randomly selected entities from a population of 148,289 unique entities. Based on past experience, USCIS expected to be able to find about 50 to 60 percent of the filing organizations in the Reference USA database, which includes information on approximately 14 million U.S. entities.

Accordingly, USCIS created a sample size much greater than the 383 minimum necessary in order to allow for these non-matches (filing organizations that could not be found in the Reference USA database). The 891 searches resulted in 512 instances where the name of the filing organization was successfully matched with Reference USA and 379 instances where the name of the filing organization was not found in the Reference USA database. Based on previous experience conducting regulatory flexibility analyses, USCIS assumes filing organizations not found in the Reference USA database are likely to be small entities and in order not to underestimate the number of small entities impacted by this rule, USCIS makes the conservative assumption to consider all of these 379 non-matched entities as small entities for the purpose of this analysis. Further, 52 of the 512 matched entities did not contain revenue or employee count data. Additional Internet research allowed us to classify all 52 as small entities: 5 small non-profit/small governmental jurisdiction and 47 small businesses. Among the 512 matches, 336 were determined to be small entities based on their revenue or employee count and their NAICS code. Combining non-matches (379), small non-profit/governmental jurisdiction (22), matches missing data (52), and small entity matches (336), enables us to classify 789 of 891 entities as small.

With an aggregated total of 789 out of a sample size of 891, DHS inferred that a majority, or 88.6%, of the entities filing Form I–129 and Form I–140 petitions were small entities. Furthermore, 332 of the 891 searched were small entities with the sales revenue data needed in order to estimate the economic impact of the proposed rule. Since these 332 were a small entity subset of the random sample of 891 searches, they were statistically significant in the context of this research.

In order to calculate the economic impact of this rule, DHS estimated the total costs associated with the proposed fee increase for each entity, divided by sales revenue of that entity. For example, an entity with $100,000 in sales revenue filed one Form I–129 and one Form I–140. Based on the proposed fee increase of $35 for Form I–129 and $155 for Form I–140, this would amount to a 0.19% economic impact on the entity.[32]

Among the 332 small entities with reported revenue data, all experienced an economic impact considerably less than 1.0%. In fact, using the above methodology, the greatest economic impact imposed by this fee change totaled 0.19% and the smallest totaled 0.00002%. The average impact on all 332 small entities with revenue data was 0.055%.

Finally, the impact on small entities was examined by looking at each form separately. Since entities can file multiple forms, the analysis considers exactly how many forms each entity submitted. For example, an entity with $100,000 in sales revenue that filed four Form I–129s would experience an economic impact of 0.14% of revenue; while an entity with sales revenue of $500,000 filing three Form I–140s would experience an economic impact of 0.093% All small entities filing Form I–129s experienced an average impact of 0.0215% (range of impact from 0.000004% to 0.525%). Similarly, the average impact on filers of Form I–140 of 0.0491% was also insignificant (range of impact from 0.00002% to 0.155.

The evidence suggests that the additional fee imposed by this rule does not represent a significant economic impact on these entities.

(b) Civil Surgeon Designation

USCIS estimates that it will receive a request for designation as a civil surgeon from 1,160 doctors in both FY 2010 and FY 2011. According to the Small Business Administration (SBA) Small Business Size Regulations at 13 CFR part 121, offices of physicians (except mental health professionals) are considered small entities when their annual sales are less than $10 million. USCIS has no records on the average annual revenue for the doctors registered as civil surgeons. For the purposes of this analysis, it is assumed that they all have annual gross revenue of under $10 million.[33] Therefore, it is

[31] The Reference USA Web site can be found at: *http://www.referenceusagov.com.*

[32] Reference USA reports sales revenue for entities as a range of values. For this analysis, DHS utilized the lower end of the range in order to assure the potential economic impact of the proposed rule was not underestimated. For example, if Reference USA reported a filing organization had revenue between $500,000 and $750,000, this analysis assumed the revenue was $500,000.

[33] NAICS Code 62111. *See* U. S. Small Business Administration Table of Small Business Size

Continued

estimated that approximately 1,200 individuals per year that would file a request for designation as a civil surgeon would be affected by this rule, with all of them being classified as small entities.

The rule proposes to establish a processing fee of $615 for the Civil Surgeon Program. This analysis utilized fees calculated without any appropriated funds, resulting in a $665 fee for the Civil Surgeon analysis.

To illustrate whether or not a rule could have a significant impact, guidelines suggested by the SBA Office of Advocacy provide that the cost of the proposed regulation may exceed one percent of the gross revenues of the entities in a particular sector or five percent of the labor costs of the entities in the sector.[34]

According to the U.S. Department of Labor, Bureau of Labor Statistics (BLS), Office of Occupational Employment Statistics, the median annual wage for Family and General Practitioners is about $161,490. Thus, the costs added by this rule are only 0.41 percent of the salary costs for one doctor.[35] As stated before, the average total revenue of the civil surgeon is unknown. Nonetheless, for the new $665 fee to exceed one percent of annual revenues, sales would be required to be $66,500 per year or less.

USCIS believes that the costs of this rulemaking to small entities would not exceed one percent of the gross revenues of the entities in the affected sector. Using the average annual labor costs and the percentage of the affected entities' annual revenue stream as guidelines, USCIS believes that the civil surgeon designation fee proposed by this rule would not have a significant economic impact on a substantial number of small entities.

(c) Application for Regional Center Under the Immigrant Investor Pilot Program (Form I–924)

The Immigrant Investor Program, also known as EB–5, was created by Congress in 1990 under 203(b)(5) of the Immigration and Nationality Act (INA) to stimulate the U.S. economy through job creation and capital investment by alien investors. Alien investors have the opportunity to obtain lawful permanent residence in the United States for themselves, their spouses, and their minor unmarried children by making a certain level of capital investment and associated job creation or preservation. There are two distinct EB–5 pathways for an alien investor to gain lawful permanent residence: the Basic Program and the Regional Center Pilot Program. Both programs require that the alien investor make a capital investment of either $500,000 or $1,000,000 (depending on whether the investment is in a Targeted Employment Area or not) in a new commercial enterprise located within the United States.

USCIS proposes a $6,230 Immigrant Investor fee for entities requesting approval and designation as a Regional Center under the Immigrant Investor Pilot Program. The new application process will require the same information from applicants that is currently required, but will standardize/simplify the reporting format. This analysis utilized fees calculated without any appropriated funds, resulting in a $6,820 fee for the EB–5 Regional Center analysis.

DOS reports that 4,218 EB–5 visas were issued in 2009.[36] USCIS estimates that 1,687 of these are primary aliens (investors) and the remainder are dependents.[37] Typically, ninety percent of EB–5 investors participate in Regional Center-related projects, while the others invest individually. Therefore, USCIS estimates FY 2009 Regional Center investors at 1,518 aliens.[38] As of October 1, 2009, there were 79 USCIS-approved Regional Centers, which equates to an average of 19.2 new investors per Regional Center in FY 2009.

Each Regional Center receives a minimum investment from every alien investor of $500,000. A search of Regional Center Web sites shows that most charge each investor a "syndication fee" of $20,000 to $50,000.[39] Further, during the application process, Regional Centers are required to provide a detailed statement regarding the amount and source of non-alien capital and a description of the planned promotional efforts. Combining the data, an average of 19.2 new investors, each investing $500,000, leads to an average additional investment per Regional Center of $9.6 million in FY 2009. While Regional Centers are prohibited from using alien investments to pay for overhead expenses, comparing FY 2009 average Regional Center investor receipts to the $6,820 application fee provides a reasonable context in which to consider the economic impact of the proposed fee. The proposed Regional Center fee of $6,820 would represent only 0.07104% of the $9.6 million average additional investment per Regional Center in FY 2009. The proposed application fee of $6,820 is only collected once and is not a recurring fee.

The data indicates there are 79 approved Regional Centers in the United States and its territories. An analysis of these 79 Regional Centers shows 66 of these Regional Centers are owned by small businesses and possibly one of these Regional Centers is owned by a small non-profit organization. Consequently 67 of the existing 79 Regional Centers, or 85%, are small entities. Based on increased interest in the EB–5 program, USCIS estimates at least 132 new Regional Centers will be approved each year over the next two years. Since the overwhelming majority of these Regional Centers are small entities, for the purpose of this analysis, DHS will assume all 132 new Regional Centers are small entities.

In summary, even though a significant number of these Regional Centers are small entities, considering this proposed fee represents only 0.07104% of the average additional investment per Regional Center in FY 2009, DHS believes this $6,820 fee does not constitute a significant economic impact on these entities. Nevertheless, DHS has prepared an Initial Regulatory Flexibility Analysis, included it in the proposed rule, and requests public comment on the impact of this rule on small entities.

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Types of Professional Skills

(a). *Forms I–129 and I–140:*

The proposed rule does not directly impose any new or additional "reporting" or "recordkeeping" requirements on filers of Form I–129. The proposed rule does not require any new professional skills for reporting.

USCIS proposes to increase the fee for Petition for a Nonimmigrant Worker (Form I–129) from $320 to $325, a $5 (1.5%) increase. USCIS proposes to

Standards Matched to North American Industry Classification System Codes. *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

[34] *See* SBA Office of Advocacy, *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act,* 18,.available at: *http://www.sba.gov/advo/laws/rfaguide.pdf.*

[35] $665 divided by $161,490.

[36] *http://www.travel.state.gov/visa/frvi/statistics/statistics_4581.html.*

[37] 4,218/2.5 = 1,687 investors. USCIS estimates that 2.5 visas are issued for each primary alien.

[38] 90% × 1,687 = 1,518.

[39] Three exemplar Web sites are provided: *http://www.cmbeb5visa.com/faq_timeline.aspx; http://www.unyrc.com/process.html; http://www.eb5dc.com/resources/CARc_AILA_Price_Plan_2_25_10_Extension.pdf.* Additionally, a list of USCIS approved Regional Centers is available online at: *http://www.uscis.gov/eb-5centers.*

increase the fee for Immigrant Petition for an Alien Worker (Form I–140) from $475 to $580, a $105 (22%) increase. In order not to underestimate the economic impact of this proposed rule on small entities, this analysis uses a fee structure based on fees without including appropriated funds. Therefore, the fees analyzed here are Form I–129 at $355 ($35 increase) and Form I–140 at $630 ($155 increase).

In order to calculate the economic impact of this rule, DHS estimated the total costs associated with the proposed fee increase for each entity, divided by sales revenue of that entity. For example, an entity with $100,000 in sales revenue filed one Form I–129 and one Form I–140. Based on the proposed fee increase of $35 for Form I–129 and $155 for Form I–140, this would amount to a 0.19% economic impact on the entity.[40]

Among the 332 small entities with reported revenue data, all experienced an economic impact considerably less than 1.0%. In fact, using the above methodology, the greatest economic impact imposed by this fee change totaled 0.19% and the smallest totaled 0.00002%. The average impact on all 332 small entities with revenue data was 0.055%.

Analyzed individually by form and weighted by the number of petitions actually filed, the economic impact upon small entities was also insignificant. All small entities filing I–129 experienced an average impact of 0.0215% (range of impact from 0.000004% to 0.525%). Similarly, the average weighted impact on filers of Form I–140 of 0.0491% was also insignificant (range of impact from 0.00002% to 0.155%). These results agree with the results of the combined sample.

(b) *Civil Surgeon Designation:*

The proposed rule does not directly impose any new or additional "reporting" or "recordkeeping" requirements on filers of Form I–129, Form I–140, or Civil Surgeon Designation. Also, the proposed rule does not require any new professional skills for reporting. The rule proposes to establish a processing fee of $615 for the Civil Surgeon Program. This analysis utilized fees calculated without any appropriated funds, resulting in a $665 fee for the Civil Surgeon analysis.

To illustrate whether or not a rule could have a significant impact, guidelines suggested by the SBA Office of Advocacy provide that the cost of the proposed regulation may exceed one percent of the gross revenues of the entities in a particular sector or five percent of the labor costs of the entities in the sector.[41]

According to the U.S. Department of Labor, Bureau of Labor Statistics (BLS), Office of Occupational Employment Statistics, the median annual wage for Family and General Practitioners is about $161,490. Thus, the costs added by this rule are only 0.41 percent of the salary costs for one doctor.[42] As stated before, the average total revenue of the civil surgeon is unknown. Nonetheless, for the new $665 fee to exceed one percent of annual revenues, sales would be required to be $66,500 per year or less.

Therefore, USCIS believes that the costs of this rulemaking to small entities would not exceed one percent of the gross revenues of the entities in the affected sector. Using both the average annual labor costs and the percentage of the affected entities' annual revenue stream as guidelines, the evidence suggests that the civil surgeon designation fee proposed by this rule would not have a significant economic impact on a substantial number of small entities.

(c) *Form I–924:*

A standardized form and instructions for the filing of proposals requesting the Regional Center designation does not currently exist. The lack of a standardized form has resulted in confusion on the part of the public regarding the specific documentation that is required in order to meet the eligibility requirements. Applicants have not paid any fees to cover costs associated with program activities. As a result, costs have been paid by fee-paying applicants and petitioners within the fee levels of other applications.

The new Form I–924, Application for Regional Center under the Immigrant Investor Pilot Program, will serve the purpose of standardizing requests for benefits and ensuring that the basic information required to determine eligibility is provided by applicants which will alleviate content inconsistencies among applicants' submissions. Form I–924 will support a more efficient process for adjudication of Regional Center proposals. Also, the proposed rule does not require any new professional skills beyond those currently in place.

USCIS proposes a $6,230 Immigrant Investor fee for entities requesting approval and designation as a Regional Center under the Immigrant Investor Pilot Program. The new application process will require the same information from applicants that is currently required, but will standardize/simplify the reporting format. This analysis utilized fees calculated without any appropriated funds, resulting in a $6,820 fee for the EB–5 Regional Center analysis.

DOS reports that 4,218 EB–5 visas were issued in 2009.[43] USCIS estimates that 1,687 of these are primary aliens (investors) and the remainder are dependents.[44] Typically, ninety percent of EB–5 investors participate in Regional Center-related projects, while the others invest individually. Therefore, USCIS estimates FY 2009 Regional Center investors at 1,518 aliens.[45]As of October 1, 2009, there were 79 USCIS-approved Regional Centers, which equates to an average of 19.2 new investors per Regional Center in FY 2009.

Each Regional Center receives a minimum investment from every alien investor of $500,000. A search of Regional Center Web sites shows that most charge each investor a "syndication fee" of $20,000 to $50,000.[46] Further, during the application process, Regional Centers are required to provide a detailed statement regarding the amount and source of non-alien capital and a description of the planned promotional efforts. Combining the data, an average of 19.2 new investors, each investing $500,000, leads to an average additional investment per Regional Center of $9.6 million in FY 2009. While Regional Centers are prohibited from using alien investments to pay for overhead expenses, comparing FY 2009 average Regional Center investor receipts to the $6,820 application fee provides a reasonable context in which to consider the economic impact of the proposed fee. The proposed Regional Center fee of

[40] Reference USA reports sales revenue for entities as a range of values. For this analysis, DHS utilized the lower end of the range in order to assure the potential economic impact of the proposed rule was not underestimated. For example, if Reference USA reported a filing organization had revenue between $500,000 and $750,000, this analysis assumed the revenue was $500,000.

[41] *See* SBA Office of Advocacy, *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act,* 18, available at: *http://www.sba.gov/advo/laws/rfaguide.pdf.*

[42] $665 divided by $161,490.

[43] *http://www.travel.state.gov/visa/frvi/statistics/statistics_4581.html.*

[44] 4,218/2.5 = 1,687 investors. USCIS estimates that 2.5 visas are issued for each primary alien.

[45] 90% × 1,687 = 1,518.

[46] Three exemplar Web sites are provided: *http://www.cmbeb5visa.com/faq_timeline.aspx; http://www.unyrc.com/process.html; http://www.eb5dc.com/resources/CARc_AILA_Price_Plan_2_25_10_Extension.pdf.* Additionally, a list of USCIS approved Regional Centers is available online at: *http://www.uscis.gov/eb-5centers.*

$6,820 would represent only 0.07104% of the $9.6 million average additional investment per Regional Center in FY 2009. The proposed application fee of $6,820 is only collected once and is not a recurring fee.

In summary, even though a significant number of these Regional Centers are small entities, considering this proposed fee represents only 0.07104% of the average additional investment per Regional Center in FY 2009, DHS believes this $6,820 fee does not constitute a significant economic impact on these entities. Nevertheless, DHS has prepared an Initial Regulatory Flexibility Analysis, included it in the proposed rule, and requests public comment on the impact of this rule on small entities.

5. An Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

DHS is unaware of any duplicative, overlapping, or conflicting Federal rules. As noted below, DHS seeks comment and information about any such rules.

6. Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of Applicable Statutes and That Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities, Including Alternatives Considered *Such as:* (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; (4) any exemption from coverage of the rule, or any part thereof, for such small entities

The INA provides for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including services provided without charge to asylum applicants and certain other immigrant applicants. In addition, DHS must fund the costs of providing services without charge by using a portion of the filing fees that are collected for other immigration benefits. Without an increase in fees, USCIS will not be able to provide petitioners with the same level of service for immigration and naturalization benefits. DHS has considered the alternative of maintaining fees at the current level with reduced services and increased wait times. While most immigration benefit fees apply to individuals, as described above, some also apply to small entities. USCIS seeks to minimize the impact on all parties, but in particular small entities. An alternative to the increased economic burden of the proposed rule is to maintain fees at their current level for small entities. The strength of this alternative is that it assures no additional fee-burden is placed on small entities; however, this alternative also would cause negative impacts to small entities.

Without the fee adjustments proposed in this rule, significant operational changes would be necessary. Given current filing volume and other economic considerations, additional revenue is necessary to prevent immediate and significant cuts in planned spending. These spending cuts would include reductions in areas such as Federal and contract staff, infrastructure spending on information technology and facilities, travel, and training. Depending on the actual level of workload received, these operational changes would result in longer application processing times, a degradation in customer service, and reduced efficiency over time. These cuts would ultimately represent an increased cost to small entities by causing delays in benefit processing and less customer service.

7. Questions for Comment To Assist Regulatory Flexibility Analysis

- Please provide comment on the numbers of small entities that may be impacted by this rulemaking.
- Please provide comment on any or all of the provisions in the proposed rule with regard to the economic impact of this rule, paying specific attention to the effect of the rule on small entities in light of the above analysis.
- Please provide comment on any significant alternatives DHS should consider in lieu of the changes proposed by this rule.
- Please describe ways in which the rule could be modified to reduce burdens for small entities consistent with the Immigration and Nationality Act and the Chief Financial Officers Act requirements.
- Please identify all relevant Federal, State or local rules that may duplicate, overlap or conflict with the proposed rule.

B. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires certain actions to be taken before an agency promulgates any notice of rulemaking "that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year." 2 U.S.C. 1532(a). While this rule may result in the expenditure of more than $100 million by the private sector annually, the rulemaking is not a "Federal mandate" as defined for UMRA purposes, 2 U.S.C. 658(6), as the payment of immigration benefit fees by individuals or other private sector entities is, to the extent it could be termed an enforceable duty, one that arises from participation in a voluntary Federal program, applying for immigration status in the United States. 2 U.S.C. 658(7)(A)(ii). Therefore, no actions were deemed necessary under the provisions of the UMRA.

C. Small Business Regulatory Enforcement Fairness Act

This rulemaking is a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rulemaking will result in an annual effect on the economy of more than $100 million, in order to generate the revenue necessary to fully fund the increased cost associated with the processing of immigration benefit applications and petitions and associated support benefits; the full cost of providing similar benefits to asylum and refugee applicants; and the full cost of similar benefits provided to other immigrants, as specified in the proposed regulation, at no charge. The increased costs will be recovered through the fees charged for various immigration benefit applications.

D. Executive Order 12866

This rule is considered by the Department of Homeland Security to be an economically significant regulatory action under Executive Order 12866, section 3(f)(1), Regulatory Planning and Review. Accordingly, this rule has been reviewed by the Office of Management and Budget.

The implementation of this rule would provide USCIS with an average of $209 million in FY 2010 and FY 2011 annual fee revenue, based on a projected annual fee-paying volume of 4.4 million immigration benefit requests and 1.9 million requests for biometric services, over the fee revenue that would be collected under the current fee structure. This increase in revenue will be used pursuant to subsections 286(m) and (n) of the INA, 8 U.S.C. 1356(m) and (n), to fund the full costs of processing immigration benefit applications and associated support benefits; the full cost of providing similar benefits to asylum

and refugee applicants; and the full cost of similar benefits provided to others at no charge.

If USCIS does not adjust the current fees to recover the full costs of processing immigration benefit requests, USCIS would be forced to enact additional significant spending reductions resulting in a reversal of the considerable progress it has made over the last several years to reduce the backlogs of immigration benefit filings, to increase the integrity of the immigration benefit system, and to protect national security and public safety. The revenue increase is based on USCIS costs and projected volumes that were available at the time the rule was drafted. USCIS has placed in the rulemaking docket a detailed analysis that explains the basis for the annual fee increase and has included an accounting statement detailing the annualized costs of the proposed rule below.

Accounting Statement, FY 2010 through FY 2011 (2009 Dollars)

Category	Primary Estimate	Minimum Estimate	Maximum Estimate
Benefits			
Un-quantified Benefits	Maintain current level of service with respect to processing times, customer service, and efficiency levels.		
Transfers			
Annualized Monetized Transfers at 3%	$209,264,850	$209,264,850	$355,791,970
Annualized Monetized Transfers at 7%	$209,264,850	$209,264,850	$355,791,970

E. Executive Order 13132

This rulemaking will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department of Homeland Security has determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995) (PRA), all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a rule. Accordingly, DHS is requesting comments on two information collections for 60-days until August 10, 2010. Comments on these information collections should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of Information Collection: Immigration Investor Pilot Program

DHS proposes to require the use of new Form I–924, Application for Regional Center under the Immigrant Investor Pilot Program, and Form I–924A, Supplement to Form I–924. This form is considered an information collection and is covered under the Paperwork Reduction Act.

a. *Type of information collection:* New information collection.

b. *Abstract:* This collection will be used by individuals and businesses to file a request for USCIS approval and designation as a regional center on behalf of an entity under the Immigrant Investor Pilot Program.

c. *Title of Form/Collection:* Application for Regional Center under the Immigrant Investor Pilot Program.

d. *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–924 and Form 924A; U.S. Citizenship and Immigration Services.

e. *Affected public who will be asked or required to respond:* Individuals and businesses.

f. *An estimate of the total number of respondents:* 132 respondents filing Form I–924, and 116 respondents filing Form I–924A.

g. *Hours per response:* Form I–924 at 40 hours per response, and Form I–924A at 3 hours per response.

h. *Total Annual Reporting Burden:* 4,428 hours.

Overview of Information Collection: Civil Surgeons Fee

This rule proposes a fee for applying for a civil surgeon designation. To apply for a civil surgeon designation, USCIS requires a civil surgeon submit the following information:

- A letter to the District Director requesting consideration,
- A copy of a current medical license (in the State in which the physician seeks to complete immigration medical examinations),
- A current resume that shows at least 4 years of professional experience (not including residency or medical school), and
- Two signature cards showing the physician's name and signature.

This information collection is required to determine whether a physician meets the statutory and regulatory requirement for civil surgeon designation. For example, all documents are reviewed to determine whether the physician has a currently valid medical license and whether the physician has had any action taken against him or her by the medical licensing authority of the State. If the civil surgeon designation request is accepted, the physician is

included in USCIS' Civil Surgeon locator and is authorized to complete Form I–693 for an applicant's adjustment of status.

a. *Type of information collection:* New information collection.

b. *Abstract:* This information collection is required to determine whether a physician meets the statutory and regulatory requirement for civil surgeon designation.

c. *Title of Form/Collection:* Application for Civil Surgeon Designation Registration.

d. *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No form number; U.S. Citizenship and Immigration Services.

e. *Affected public who will be asked or required to respond:* Individuals and businesses.

f. *An estimate of the total number of respondents:* 1,200 respondents.

g. *Hours per response:* One hour.

h. *Total Annual Reporting Burden:* 1,200 hours.

Comments concerning these collections and forms can be submitted to the Department of Homeland Security, USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210.

The changes to the proposed fees will require minor amendments to immigration benefit and petition forms to reflect the new fees. The necessary changes to the annual cost burden and to the forms will be submitted to OMB using OMB Form 83–C, Correction Worksheet, when this proposed rule is submitted to OMB as a final rule.

List of Subjects

8 CFR Part 103

Administrative practice and procedures; Authority delegations (government agencies); Freedom of Information; Privacy; Reporting and recordkeeping requirements; and Surety bonds.

8 CFR Part 204

Administrative practice and procedure; Immigration; Reporting and recordkeeping requirements.

8 CFR Part 244

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES; AVAILABILITY OF RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552(a); 8 U.S.C. 1101, 1103, 1304, 1356; 31 U.S.C. 9701; Public Law 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p.166; 8 CFR part 2.

§ 103.2 [Amended]

2. Section 103.2 is amended by:

a. Removing paragraph (e)(4)(ii);

b. Redesignating paragraphs (e)(4)(iii), and (e)(4)(iv), as paragraphs (e)(4)(ii), and (e)(4)(iii), respectively; and by

c. Removing paragraph (f).

3. Section 103.7 is amended by:

a. Revising paragraphs (b) and (c);

b. Redesignating paragraph (d) as paragraph (f);

c. Adding new paragraphs (d) and (e); and by

d. Revising newly redesignated paragraph (f).

The revisions and additions read as follows:

§ 103.7 Fees.

* * * * *

(b) *Amounts of fees.* (1) *Prescribed fees and charges.* (i) *USCIS fees.* A request for immigration benefits submitted to USCIS must include the required fee as prescribed under this section. The fees prescribed in this section are associated with the benefit, the adjudication, and the type of request and not solely determined by the form number listed below. The term "form" as defined in 8 CFR part 1, may include a USCIS-approved electronic equivalent of such form as USCIS may prescribe on its official Web site at *http//www.uscis.gov.*

(A) *Certification of true copies:* $2.00 per copy.

(B) *Attestation under seal:* $2.00 each.

(C) *Biometric services (Biometric Fee).* For capturing, storing, and using biometric information (Biometric Fee). A service fee of $85 will be charged for any individual who is required to have biometric information captured, stored, and used in connection with an application or petition for certain immigration and naturalization benefits (other than asylum), whose application fee does not already include the charge for biometric services. No biometric service fee is charged when:

(*1*) A written request for an extension of the approval period is received by USCIS prior to the expiration date of approval of an Application for Advance Processing of Orphan Petition, if a Petition to Classify Orphan as an Immediate Relative has not yet been submitted in connection with an approved Application for Advance Processing of Orphan Petition. This extension without fee is limited to one occasion. If the approval extension expires prior to submission of an associated Petition to Classify Orphan as an Immediate Relative, then a complete application and fee must be submitted for a subsequent application.

(*2*) There is no fee for the associated benefit request that was, or is, being submitted.

(D) *Immigrant visas.* For processing immigrant visas issued by the Department of State in embassies or consulates: $165.

(E) Request for a search of indices to historical records to be used in genealogical research (Form G–1041): $20. The search fee is not refundable.

(F) Request for a copy of historical records to be used in genealogical research (Form G–1041A): $20 for each file copy from microfilm, or $35 for each file copy from a textual record. In some cases, the researcher may be unable to determine the fee, because the researcher will have a file number obtained from a source other than USCIS and therefore not know the format of the file (microfilm or hard copy). In this case, if USCIS locates the file and it is a textual file, USCIS will notify the researcher to remit the additional $15. USCIS will refund the records request fee only when it is unable to locate the file previously identified in response to the index search request.

(G) *Application to Replace Permanent Resident Card (Form I–90).* For filing an application for a Permanent Resident Card (Form I–551) in lieu of an obsolete card or in lieu of one lost, mutilated, or destroyed, or for a change in name: $365.

(H) *Application for Replacement/Initial Nonimmigrant Arrival-Departure Document (Form I–102).* For filing a petition for an application for Arrival/Departure Record (Form I–94) or Crewman's Landing Permit (Form I–95), in lieu of one lost, mutilated, or destroyed: $330.

(I) *Petition for a Nonimmigrant Worker (Form I–129).* For filing a petition for a nonimmigrant worker: $325.

(J) *Petition for Nonimmigrant Worker in CNMI (Form I–129CW).* For an employer to petition on behalf of one or more beneficiaries: $325 plus a supplemental CNMI education funding fee of $150 per beneficiary per year. The

CNMI education funding fee cannot be waived.

(K) *Petition for Alien Fiancé(e) (Form I–129F).* For filing a petition to classify a nonimmigrant as a fiancée or fiancé under section 214(d) of the Act: $340; there is no fee for a K–3 spouse as designated in 8 CFR 214.1(a)(2) who is the beneficiary of an immigrant petition filed by a United States citizen on a Petition for Alien Relative (Form I–130).

(L) *Petition for Alien Relative (Form I–130).* For filing a petition to classify status of an alien relative for issuance of an immigrant visa under section 204(a) of the Act: $420.

(M) *Application for Travel Document (Form I–131).* For filing an application for travel document: $360. There is no fee for filing for a Refugee Travel Document or advance parole if filed in conjunction with a pending or concurrently filed Form I–485 with fee that was filed on or after July 30, 2007.

(N) *Immigrant Petition for Alien Worker (Form I–140).* For filing a petition to classify preference status of an alien on the basis of profession or occupation under section 204(a) of the Act: $580.

(O) *Application for Advance Permission to Return to Unrelinquished Domicile (Form I–191).* For filing an application for discretionary relief under section 212(c) of the Act: $585.

(P) *Application for Advance Permission to Enter as a Nonimmigrant (Form I–192).* For filing an application for discretionary relief under section 212(d)(3) of the Act, except in an emergency case or where the approval of the application is in the interest of the United States Government: $585.

(Q) *Application for Waiver for Passport and/or Visa (Form I–193).* For filing an application for waiver of passport and/or visa: $585.

(R) *Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I–212).* For filing an application for permission to reapply for an excluded, deported or removed alien, an alien who has fallen into distress, an alien who has been removed as an alien enemy, or an alien who has been removed at government expense in lieu of deportation: $585.

(S) *Notice of Appeal or Motion (Form I–290B).* For appealing a decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction: $630. The fee will be the same for appeal of a denial of a benefit request with one or multiple beneficiaries.

(T) *Petition for Amerasian, Widow(er), or Special Immigrant (Form I–360).* For filing a petition for an Amerasian, Widow(er), or Special Immigrant: $405. The following requests are exempt from this fee:

(*1*) A petition seeking classification as an Amerasian;

(*2*) A self-petitioning battered or abused spouse, parent, or child of a United States citizen or lawful permanent resident; or

(*3*) A Special Immigrant Juvenile.

(*4*) An Iraqi national who worked for or on behalf of the U.S. Government in Iraq.

(U) *Application to Register Permanent Residence or Adjust Status (Form I–485).* For filing an application for permanent resident status or creation of a record of lawful permanent residence:

(*1*) $985 for an applicant 14 years of age or older; or

(*2*) $635 for an applicant under the age of 14 years when it is:

(*i*) Submitted concurrently for adjudication with the Form I–485 of a parent;

(*ii*) The applicant is seeking to adjust status as a derivative of his or her parent; and

(*iii*) The child's application is based on them being a close relative of the same individual who is the basis for the child's parent's adjustment of status..

(*3*) There is no fee if an applicant is filing as a refugee under section 209(a) of the Act.

(V) *Application To Adjust Status under Section 245(i) of the Act (Supplement A to Form I–485).* Supplement to Form I–485 for persons seeking to adjust status under the provisions of section 245(i) of the Act: $1,000. There is no fee when the applicant is an unmarried child less than 17 years of age, or when the applicant is the spouse, or the unmarried child less than 21 years of age of a legalized alien and who is qualified for and has applied for voluntary departure under the family unity program.

(W) *Immigrant Petition by Alien Entrepreneur (Form I–526).* For filing a petition for an alien entrepreneur: $1,500.

(X) *Application To Extend/Change Nonimmigrant Status (Form I–539).* For filing an application to extend or change nonimmigrant status: $290.

(Y) *Petition To Classify Orphan as an Immediate Relative (Form I–600).* For filing a petition to classify an orphan as an immediate relative for issuance of an immigrant visa under section 204(a) of the Act. Only one fee is required when more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters: $720.

(Z) *Application for Advance Processing of Orphan Petition (Form I–600A).* For filing an application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.): $720. No fee is charged if Form I–600 has not yet been submitted in connection with an approved Form I–600A subject to the following conditions:

(*1*) The applicant requests an extension of the approval in writing and the request is received by USCIS prior to the expiration date of approval.

(*2*) The applicant's home study is updated and USCIS determines that proper care will be provided to an adopted orphan.

(*3*) A no fee extension is limited to one occasion. If the Form I–600A approval extension expires prior to submission of an associated Form I–600, then a complete application and fee must be submitted for any subsequent application.

(AA) *Application for Waiver of Ground of Inadmissibility (Form I–601).* For filing an application for waiver of grounds of inadmissibility: $585.

(BB) *Application for Waiver of the Foreign Residence Requirement (Under Section 212(e) of the Immigration and Nationality Act, as Amended) (Form I–612).* For filing an application for waiver of the foreign-residence requirement under section 212(e) of the Act: $585.

(CC) *Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act (Form I–687).* For filing an application for status as a temporary resident under section 245A(a) of the Act: $1,130.

(DD) *Application for Waiver of Grounds of Inadmissibility Under Sections 245A or 210 of the Immigration and Nationality Act (Form I–690).* For filing an application for waiver of a ground of inadmissibility under section 212(a) of the Act as amended, in conjunction with the application under sections 210 or 245A of the Act, or a petition under section 210A of the Act: $200.

(EE) *Notice of Appeal of Decision Under Sections 245A or 210 of the Immigration and Nationality Act (or a Petition Under Section 210A of the Act) (Form I–694).* For appealing the denial of an application under sections 210 or 245A of the Act, or a petition under section 210A of the Act: $755.

(FF) *Petition To Remove the Conditions of Residence Based on Marriage (Form I–751).* For filing a petition to remove the conditions on residence based on marriage: $505.

(GG) *Application for Employment Authorization (Form I–765).* $380; no fee if filed in conjunction with a pending or concurrently filed Form I–485 with fee that was filed on or after July 30, 2007.

(HH) *Petition To Classify Convention Adoptee as an Immediate Relative (Form I–800).*

(*1*) There is no fee for the first Form I–800 filed for a child on the basis of an approved Application for Determination of Suitability To Adopt a Child from a Convention Country (Form I–800A) during the approval period.

(*2*) If more than one Form I–800 is filed during the approval period for different children, the fee is $720 for the second and each subsequent petition submitted.

(*3*) If the children are already siblings before the proposed adoption, however, only one filing fee of $720 is required, regardless of the sequence of submission of the immigration benefit.

(II) *Application for Determination of Suitability To Adopt a Child From a Convention Country (Form I–800A).* For filing an application for determination of suitability to adopt a child from a Convention country: $720.

(JJ) *Request for Action on Approved Application for Determination of Suitability To Adopt a Child From a Convention Country (Form I–800A, Supplement 3).* This filing fee is not charged if Form I–800 has not been filed based on the approval of the Form I–800A, and Form I–800A Supplement 3 is filed in order to obtain a first extension of the approval of the Form I–800A: $360.

(KK) *Application for Family Unity Benefits (Form I–817).* For filing an application for voluntary departure under the Family Unity Program: $435.

(LL) *Application for Temporary Protected Status (Form I–821).* For first time applicants: $50. There is no fee for re-registration.

(MM) *Application for Action on an Approved Application or Petition (Form I–824).* For filing for action on an approved application or petition: $405.

(NN) *Petition by Entrepreneur To Remove Conditions (Form I–829).* For filing a petition by entrepreneur to remove conditions: $3,750.

(OO) Application for suspension of deportation or special rule cancellation of removal (pursuant to section 203 of Pub. L. 105–100) (Form I–881):

(*1*) $285 for adjudication by the Department of Homeland Security, except that the maximum amount payable by family members (related as husband, wife, unmarried child under 21, unmarried son, or unmarried daughter) who submit applications at the same time shall be $570.

(*2*) $165 for adjudication by the Immigration Court (a single fee of $165 will be charged whenever applications are filed by two or more aliens in the same proceedings). (*3*) The $165 fee is not required if the Form I–881 is referred to the Immigration Court by the Department of Homeland Security.

(PP) Application for authorization to issue certification for health care workers (Form I–905): $230.

(QQ) *Request for Premium Processing Service (Form I–907).* The fee must be paid in addition to, and in a separate remittance from, other filing fees. The request for premium processing fee will be adjusted annually by notice in the **Federal Register** based on inflation according to the Consumer Price Index (CPI). The fee to request premium processing: $1,225. The fee for Premium Processing Service may not be waived.

(RR) *Civil Surgeon Designation.* For filing an application for civil surgeon designation: $615.

(SS) *Application for Regional Center under the Immigrant Investor Pilot Program (Form I–924).* For filing an application for regional center under the Immigrant Investor Pilot Program: $6,230.

(TT) *Petition for Qualifying Family Member of a U–1 Nonimmigrant (Form I–929).* For U–1 principal applicant to submit for each qualifying family member who plans to seek an immigrant visa or adjustment of U status: $215.

(UU) *Application to File Declaration of Intention (Form N–300).* For filing an application for declaration of intention to become a U.S. citizen: $250.

(VV) *Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the Act) (Form N–336).* For filing a request for hearing on a decision in naturalization proceedings under section 336 of the Act: $650.

(WW) *Application for Naturalization (Form N–400).* For filing an application for naturalization (other than such application filed on or after October 1, 2004, by an applicant who meets the requirements of sections 328 or 329 of the Act with respect to military service, for which no fee is charged): $595.

(XX) *Application to Preserve Residence for Naturalization Purposes (Form N–470).* For filing an application for benefits under section 316(b) or 317 of the Act: $330.

(YY) *Application for Replacement Naturalization/Citizenship Document (Form N–565).* For filing an application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed; for a certificate of citizenship in a changed name under section 343(c) of the Act; or for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(b) of the Act: $345.

(ZZ) *Application for Certificate of Citizenship (Form N–600).* For filing an application for a certificate of citizenship under section 309(c) or section 341 of the Act for applications filed on behalf of a biological child: $600. For applications filed on behalf of an adopted child: $550.

(AAA) *Application for Citizenship and Issuance of Certificate under Section 322 (Form N–600K).* For filing an application for citizenship and issuance of certificate under section 322 of the Act: $600, for an application filed on behalf of a biological child and $550 for an application filed on behalf of an adopted child.

(ii) *Other DHS immigration fees.* The following fees are applicable to one or more of the immigration components of DHS:

(A) *DCL System Costs Fee.* For use of a Dedicated Commuter Lane (DCL) located at specific Ports of Entry of the United States by an approved participant in a designated vehicle: $80.00, with the maximum amount of $160.00 payable by a family (husband, wife, and minor children under 18 years-of-age). Payable following approval of the application but before use of the DCL by each participant. This fee is non-refundable, but may be waived by the district director. If a participant wishes to enroll more than one vehicle for use in the PORTPASS system, he or she will be assessed with an additional fee of: $42 for each additional vehicle enrolled.

(B) *Form I–17.* For filing a petition for school certification: $1,700, plus a site visit fee of $655 for each location listed on the form.

(C) *Form I–68.* For application for issuance of the Canadian Border Boat Landing Permit under section 235 of the Act: $16.00. The maximum amount payable by a family (husband, wife, unmarried children under 21 years of age, parents of either husband or wife) shall be $32.00.

(D) *Form I–94.* For issuance of Arrival/Departure Record at a land border Port-of-Entry: $6.00.

(E) *Form I–94W.* For issuance of Nonimmigrant Visa Waiver Arrival/Departure Form at a land border Port-of-Entry under section 217 of the Act: $6.00.

(F) *Form I–246.* For filing application for stay of deportation under part 243 of this chapter: $155.00.

(G) *Form I–570.* For filing application for issuance or extension of refugee travel document: $45.00

(H) *Form I–823.* For application to a PORTPASS program under section 286 of the Act—$25.00, with the maximum amount of $50.00 payable by a family (husband, wife, and minor children under 18 years of age). The application fee may be waived by the district director. If fingerprints are required, the inspector will inform the applicant of the current Federal Bureau of Investigation fee for conducting fingerprint checks prior to accepting the application fee. Both the application fee (if not waived) and the fingerprint fee must be paid to CBP before the application will be processed. The fingerprint fee may not be waived. For replacement of PORTPASS documentation during the participation period: $25.00.

(I) *Form I–901.* For remittance of the I–901 SEVIS fee for F and M students: $200. For remittance of the I–901 SEVIS fee for certain J exchange visitors: $180. For remittance of the I–901 SEVIS fee for J–1 au pairs, camp counselors, and participants in a summer work/travel program: $35. There is no I–901 SEVIS fee remittance obligation for J exchange visitors in Federally-funded programs with a program identifier designation prefix that begins with G–1, G–2, G–3 or G–7.

(J) Special statistical tabulations—a charge will be made to cover the cost of the work involved: DHS Cost.

(K) Set of monthly, semiannual, or annual tables entitled "Passenger Travel Reports via Sea and Air": $7.00. Available from DHS, then Immigration & Naturalization Service, for years 1975 and before. Later editions are available from the United States Department of Transportation, contact: United States Department of Transportation, Transportation Systems Center, Kendall Square, Cambridge, MA 02142.

(L) Classification of a citizen of Canada to be engaged in business activities at a professional level pursuant to section 214(e) of the Act (Chapter 16 of the North American Free Trade Agreement): $50.00.

(M) Request for authorization for parole of an alien into the United States: $65.00.

(iii) *Fees for copies of records.* Fees for production or disclosure of records under 5 U.S.C. 552 shall be charged in accordance with the regulations of the Department of Homeland Security at 6 CFR 5.11.

(iv) *Adjustment to fees.* The fees prescribed in paragraph (b)(1)(i) of this section may be adjusted annually by publication of an inflation adjustment. The inflation adjustment will be announced by a publication of a notice in the **Federal Register**. The adjustment shall be a composite of the Federal civilian pay raise assumption and non-pay inflation factor for that fiscal year issued by the Office of Management and Budget for agency use in implementing OMB Circular A–76, weighted by pay and non-pay proportions of total funding for that fiscal year. If Congress enacts a different Federal civilian pay raise percentage than the percentage issued by OMB for Circular A–76, the Department of Homeland Security may adjust the fees, during the current year or a following year to reflect the enacted level. The prescribed fee or charge shall be the amount prescribed in paragraph (b)(1)(i) of this section, plus the latest inflation adjustment, rounded to the nearest $5 increment.

(v) *Fees for immigration court and Board of Immigration Appeals.* Fees for proceedings before immigration judges and the Board of Immigration Appeals are provided in 8 CFR 1103.7.

(c) *Waiver of fees.* (1) *Eligibility for a fee waiver.* Discretionary waiver of the fees provided in paragraph (b)(1)(i) of this section are limited as follows:

(i) The party requesting the benefit is unable to pay the prescribed fee.

(ii) A waiver based on inability to pay is consistent with the status or benefit being sought including requests that require demonstration of the applicant's ability to support himself or herself, or individuals who seek immigration status based on a substantial financial investment.

(2) *Requesting a fee waiver.* To request a fee waiver, a person requesting an immigration benefit must 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. There is no appeal of the denial of a fee waiver request.

(3) *USCIS fees that may be waived.* No fee relating to any application, petition, appeal, motion, or request made to U.S. Citizenship and Immigration Services may be waived except for the following:

(i) Biometric Fee,

(ii) Application to Replace Permanent Resident Card;

(iii) Petition for a CNMI-Only Nonimmigrant Transitional Worker,

(iv) Application for Advance Permission to Return to Unrelinquished Domicile,

(v) Notice of Appeal or Motion,

(vi) Application for Employment Authorization,

(vii) Application for Family Unity Benefits

(viii) Application for Temporary Protected Status,

(ix) Application to File Declaration of Intention, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA),

(x) Application for Naturalization,

(xi) Application to Preserve Residence for Naturalization Purposes.

(xii) Application for Replacement Naturalization/Citizenship Document,

(xiii) Application for Certificate of Citizenship, and

(xiv) Application for Citizenship and Issuance of Certificate under Section 322.

(4) The following fees may be waived only in the case of an alien in lawful nonimmigrant status under sections 101(a)(15)(T) or (U) of the Act; an applicant under section 209(b) of the Act; an approved VAWA self-petitioner; or an alien to whom section 212(a)(4) of the Act does not apply with respect to adjustment of status:

(i) Application for Advance Permission to Enter as Nonimmigrant;

(ii) Application for Waiver for Passport and/or Visa;

(iii) Application to Register Permanent Residence or Adjust Status;

(iv) Application for Waiver of Grounds of Inadmissibility.

(5) *Immigration Court fees.* The provisions relating to the authority of the immigration judges or the Board to waive fees prescribed in paragraph (b) of this section in cases under their jurisdiction can be found at 8 CFR 1003.8 and 1003.24.

(6) *Fees under the Freedom of Information Act (FOIA).* FOIA fees may be waived or reduced if DHS determines that such action would be in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(d) *Exceptions and exemptions.* The Director of USCIS may approve and suspend exemptions from any fee required by paragraph (b)(1)(i) of this section or provide that the fee may be waived for a case or specific class of cases that is not otherwise provided in this section, if the Director determines that such action would be in the public interest, and the action is consistent with other applicable law. This discretionary authority will not be delegated to any official other than the USCIS Deputy Director.

(e) *Premium processing service.* A person submitting a request to USCIS may request 15 calendar day processing of certain employment-based immigration benefit requests.

(1) *Submitting a request for premium processing.* A request for premium processing must be submitted on the form prescribed by USCIS, including the required fee, and submitted to the address specified on the form instructions.

(2) *15-day limitation.* The 15 calendar day processing period begins when USCIS receives the request for premium processing accompanied by an eligible employment-based immigration benefit request.

(i) If USCIS cannot reach a final decision on a request for which premium processing was requested, as evidenced by an approval notice, denial notice, a notice of intent to deny, or a request for evidence, USCIS will refund the premium processing service fee, but continue to process the case.

(ii) USCIS may retain the premium processing fee and not reach a conclusion on the request within 15 days, and not notify the person who filed the request, if USCIS opens an investigation for fraud or misrepresentation relating to the benefit request.

(3) *Requests eligible for premium processing.*

(i) USCIS will designate the categories of employment-related benefit requests that are eligible for premium processing.

(ii) USCIS will announce by its official Internet Web site, currently *http://www.uscis.gov,* those requests for which premium processing may be requested, the dates upon which such availability commences and ends, and any conditions that may apply.

(f) *Authority to certify records.* The Director of USCIS or such officials as he or she may designate, may certify records when authorized under 5 U.S.C. 552 or any other law to provide such records.

PART 204—IMMIGRANT PETITIONS

4. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1184, 1186a, 1255, 1641; 8 CFR part 2.

5. Section 204.6 is amended by revising paragraph (m)(6) to read as follows:

§ 204.6 Petitions for employment creation aliens.

* * * * *

(m) * * *

(6) *Termination of participation of regional centers.* To ensure that regional centers continue to meet the requirements of section 610(a) of the Appropriations Act, a regional center must provide USCIS with updated information to demonstrate the regional center is continuing to promote economic growth, improved regional productivity, job creation, or increased domestic capital investment in the approved geographic area. Such information must be submitted to USCIS on an annual basis, on a cumulative basis, and/or as otherwise requested by USCIS, using a form designated for this purpose. USCIS will issue a notice of intent to terminate the participation of a regional center in the pilot program if a regional center fails to submit the required information or upon a determination that the regional center no longer serves the purpose of promoting economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment. The notice of intent to terminate shall be made upon notice to the regional center and shall set forth the reasons for termination. The regional center must be provided thirty days from receipt of the notice of intent to terminate to offer evidence in opposition to the ground or grounds alleged in the notice of intent to terminate. If USCIS determines that the regional center's participation in the Pilot Program should be terminated, USCIS shall notify the regional center of the decision and of the reasons for termination. The regional center may appeal the decision within thirty days after the service of notice to the USCIS as provided in 8 CFR 103.3.

* * * * *

PART 244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

4. The authority citation for part 244 continues to read as follows:

Authority: 8 U.S.C. 1103, 1254, 1254a note, 8 CFR part 2.

§ 244.20 [Removed]

5. Section 244.20 is removed.

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

6. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; Title VII of Public Law 110–229; 8 CFR part 2.

7. Section 274a.12 is amended by revising paragraphs (a)(8) and (a)(11) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

(a) * * *

(8) An alien admitted to the United States as a nonimmigrant pursuant to the Compact of Free Association between the United States and of the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau;

* * * * *

(11) An alien whose enforced departure from the United States has been deferred in accordance with a directive from the President of the United States to the Secretary. Employment is authorized for the period of time and under the conditions established by the Secretary pursuant to the Presidential directive;

* * * * *

Janet Napolitano,

Secretary.

[FR Doc. 2010–13991 Filed 6–9–10; 8:45 am]

BILLING CODE 9111–97–P

EXHIBIT B

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

March 13, 2011 **PM-602-0011.1**

Policy Memorandum

SUBJECT: Fee Waiver Guidelines as Established by the Final Rule of the USCIS Fee Schedule; Revisions to *Adjudicator's Field Manual* (*AFM*) Chapter 10.9, *AFM* Update AD11-26

Purpose
This Policy Memorandum (PM) provides guidance on processing fee waiver requests filed pursuant to 8 CFR 103.7(c) as amended by changes made in the final rule "U.S. Citizenship and Immigration Services Fee Schedule," published in the *Federal Register* (FR) on September 24, 2010. See 75 FR 58961.

Scope
Unless specifically exempted herein, this PM applies to and is binding on all USCIS employees. This PM supersedes and rescinds all preceding fee-waiver guidance, including the following memoranda:

- Michael A. Pearson memorandum, *Fee Waiver Relating to Employment Authorization for Victims of Trafficking*, dated May 25, 2001
- William R. Yates memorandum, *Adjustment of Fees of the Immigration Examinations Fee Account*, dated February 1, 2002
- Johnny N. Williams memorandum, *Fee Surcharges and Refund of Fee Surcharges*, dated January 23, 2003
- William R. Yates memorandum, *Correction regarding the fees for filing Form N-600, Application for Certificate of Citizenship, and Form N-600K, Application for Citizenship and Issuance of Certificate under Section 322*, dated July 23, 2003
- William R. Yates memorandum, *Field Guidance on Granting Fee Waivers Pursuant to 8 CFR 103.7(c)*, dated March 4, 2004
- William R. Yates memorandum, *Adjustment of the Immigration Benefit Application Fee Schedule*, dated April 15, 2004
- William R. Yates memorandum, *Fee Waivers for Hurricane Katrina Victims*, dated September 19, 2005
- Don Neufeld memorandum, *Adjustment of the Immigration Benefit Application Fee Schedule*, dated July 12, 2007

- Don Neufeld memorandum, *Fee Waiver Guidelines as Established by the Final Rule of the Immigration and Naturalization Benefit Application and Petition Fee Schedule, Revisions to Adjudicators' Field Manual (AFM) Chapters 10.9(a) (AFM Update AD07-19)*, dated July 20, 2007
- Michael L. Aytes and Rendell Jones memorandum, *Fee Waivers for Victims of Southern California Wildfires*, dated November 27, 2007

Authority
This PM is issued under the authority of Title 8 CFR 103.7(c) and INA section 286(m).

Background
The final rule "U.S. Citizenship and Immigration Services Fee Schedule," effective November 23, 2010, establishes a new fee schedule for immigration-benefit requests. It also amends the regulations governing fee-waiver eligibility. USCIS has developed the new Form I-912, Request for Fee Waiver, in an effort to facilitate the fee-waiver request process. The form will become available for public use on November 23, 2010. As the use of a USCIS-published fee-waiver request form is not mandated by regulation, USCIS will continue to consider applicant-generated fee-waiver requests (i.e., those not submitted on Form I-912) that comply with 8 CFR 103.7(c).

Policy
It is USCIS policy that individuals may apply for and be granted a fee waiver for certain immigration benefits and services based on an inability to pay. Please consult the revisions to *AFM* Chapter 10.9 in this PM for the complete list of forms and services that are eligible for a fee waiver.

Implementation
USCIS released Form I-912 to provide a standard means for submitting fee-waiver requests. The form is intended to bring clarity and consistency to the fee-waiver process. The Form I-912 instructions provide applicants with guidance on properly completing Form I-912 and submitting supporting documentation. The Form I-912 instructions also give information on the methodology that USCIS uses to make a decision on a fee-waiver request. USCIS uses the same methodology whether the request is submitted on a Form I-912 or via an applicant-generated request. USCIS will continue to consider applicant-generated fee-waiver requests (i.e., those not submitted on Form I-912), but those requests must meet the criteria described in *AFM* Chapter 10.9 in order for the fee to be waived. All pending and newly submitted fee waiver requests will be reviewed under the guidelines in that chapter.

In general, fee-waiver requests will be reviewed by considering, in a step-wise fashion, whether the applicant is receiving a means-tested benefit, whether the applicant's household income level renders him or her unable to pay, or whether recent financial hardship otherwise renders him or her unable to pay. This PM also provides examples of required or acceptable supporting documentation.

Revisions to the *AFM*

1. Effective March 13, 2011, Chapter 10.9 of the *AFM* is revised to read:

10.9 Waiver of Fees.

(a) Submission of Request. A person requesting a waiver of fees for an application, petition, appeal, motion, service or other matter may submit either a **Form I-912**, **Request for Fee Waiver**, or a written request for permission to have their immigration benefit request processed without payment of the required fee as provided in **8 CFR 103.7(c)** and this chapter. There is no fee required for filing a fee-waiver request.

(1) Applicability. These guidelines apply to filing fees for those applications, petitions, motions, and requests contained in 8 CFR 103.7(b)(1)(i) and (c).

(2) General Fee Waivers. USCIS may waive fees for the following based on an inability to pay:

- Biometrics services fee;
- Form I-90, Application to Replace Permanent Resident Card;
- Form I-191, Application for Advance Permission to Return to Unrelinquished Domicile;
- Form I-751, Petition to Remove Conditions on Residence;
- Form I-765, Application for Employment Authorization;
- Form I-817, Application for Family Unity Benefits;
- Form I-821, Application for Temporary Protected Status;
- Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105-100 (NACARA));
- Form N-300, Application to File Declaration of Intention;
- Form N-336, Request for a Hearing on a Decision in Naturalization Proceedings (Under Section 336 of the INA);
- Form N-400, Application for Naturalization;
- Form N-470, Application to Preserve Residence for Naturalization Purposes;
- Form N-565, Application for Replacement of Naturalization/Citizenship Document;
- Form N-600, Application for Certification of Citizenship; and
- Form N-600K, Application for Citizenship and Issuance of Certificate under Section 322.

(3) Conditional Fee Waivers. If the application or petition is not listed in paragraph (a)(2) of this chapter, USCIS may waive a fee based on an inability to pay and subject to the conditions specified:

- Form I-131, Application for Travel Document, only for those applying for humanitarian parole (i.e., only for persons that are applying for an Advance Parole Document under Application Type "e" or "f" in Part 2 of the Form I-131);
- Form I-192, Application for Advance Permission to Enter as Nonimmigrant for an applicant who is exempt from the public charge grounds of inadmissibility of section 212(a)(4) of the Immigration and Nationality Act (INA), either by statute or by policy;
- Form I-193, Application for Waiver for Passport and/or Visa for an applicant who is exempt from the public charge grounds of inadmissibility of section 212(a)(4) of the INA, either by statute or by policy;
- Form I-290B, Notice of Appeal or Motion, if the underlying application was fee exempt, the fee was waived, or it was eligible for a fee waiver;
- Form I-485, Application To Register Permanent Residence or Adjust Status, for the following individuals:
  - An Afghan and Iraqi Interpreter who has received a Special Immigrant Visa;
  - A "Registry" applicant filing under section 249 of the INA who has maintained continuous residence in the United States since before January 1, 1972; or
  - An applicant who is exempt from the public charge grounds of inadmissibility under section 212(a)(4) of the INA, including but not limited to the following circumstances:
    - Applications filed by asylees under section 209(b) of the INA;
    - Applications for Special Immigrant Juveniles;
    - Applications under the Cuban Adjustment Act, the Haitian Refugee Immigration Fairness Act (HRIFA), and the Nicaraguan Adjustment and Central American Relief Act (NACARA), or similar provisions; and
    - Applications filed by Lautenberg Parolees.
- Form I-601, Application for Waiver of Grounds of Inadmissibility for an applicant who is exempt from the public charge grounds of inadmissibility of section 212(a)(4) of the INA.

(4) Humanitarian Fee Waivers. Based on an inability to pay, USCIS may waive any fees associated with the filing of any benefit request by a VAWA self–petitioner or under sections 101(a)(15)(T) (T visas), 101(a)(15)(U) (U visas), 106 (battered spouses of A, G, E–3, or H nonimmigrants), 240A(b)(2) (battered spouse or child of a lawful permanent resident or U.S. citizen), and 244(a)(3) (Temporary Protected Status), of the Act (as in effect on March 31, 1997). This would include filings not otherwise eligible for a fee waiver or eligible only for conditional fee waivers such as Forms I-212, I-485, I-539, and I-601.

(5) Documentation. Whether the request is submitted on **Form I-912** or in the form of a written statement, the applicant may submit additional documentation to provide proof of his or her inability to pay. Fee-waiver requests should be decided based upon the request for a fee waiver and any additional documentation submitted in support of the fee waiver request. A fee-waiver request may be approved in the

absence of such additional documentation provided that the applicant's request is sufficiently detailed to substantiate his or her inability to pay the fee. If USCIS determines that the individual did not substantiate his or her inability to pay, then the fee waiver request should be denied.

(6) Submission of Both Fee and Fee Waiver Request. When a form is submitted with both the appropriate fee for the form and a fee-waiver request, the form should be processed, if otherwise acceptable, as properly filed with fee. No subsequent consideration should be given to, nor action taken on the fee-waiver request.

(b) Review of Request.

(1) Inability to Pay. Each fee-waiver request is unique and should be considered on its own merits. A fee-waiver request may be granted when USCIS has determined that the individual is unable to pay the fee. Inability to pay the fee is based on the individual's overall financial picture and household situation, as may be established according to the steps and criteria described below.

(2) Determining Inability to Pay and Adjudicating the Fee-Waiver Request. In determining whether the individual is unable to pay the fee and should be granted a fee waiver, the USCIS employee must proceed according to the following steps and criteria:

- Step 1. Is the individual receiving a means-tested benefit?

    - The individual may demonstrate that he or she is receiving a "means-tested benefit." A means-tested benefit is 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.

    - To demonstrate that the individual (or the individual's spouse or the head of the household in which the individual resides) is receiving a means-tested benefit, the applicant should provide proof in the form of a letter, notice, or other official document(s) containing the name of the agency granting the benefit. The document(s) submitted must show the name of the recipient of the means-tested benefit and the name of the benefit received.

    - If the individual provides sufficient proof of the means-tested benefit, the fee waiver will normally be approved, and no further information will be required.

- Step 2. Is the individual's household income at or below 150 percent of the Federal Poverty Guidelines at the time of filing?

  - The individual may demonstrate that his or her household income, on which taxes were paid for the most recent tax year, is at or below 150 percent of the Federal Poverty Level as established in the most recent poverty guidelines. Those guidelines are revised annually by the Secretary of Health and Human Services and are available at http://aspe.hhs.gov/poverty. For fee-waiver review purposes, a household may include an applicant, spouse, parent(s) living with the applicant, and any of the following family members:
    - An unmarried child or legal ward under 21 years of age living with the applicant;
    - An unmarried child or legal ward over 21 years of age but under 24 years of age who is a full-time student and living with the applicant when not at school; or
    - An unmarried child or legal ward for whom the applicant is the legal guardian because the individual is physically or mentally disabled to the extent that he or she cannot adequately care for him or herself and cannot establish, maintain, or re-establish his or her own household.

  - The applicant may submit documentation as follows to demonstrate that his or her household income is at or below 150 percent of the Federal Poverty Guidelines at the time of filing:
    - Evidence of current employment or self-employment such as recent pay statements, W-2 forms, statement(s) from the individual's employer(s) on business stationery showing salary or wages paid, or income tax returns (proof of filing of a tax return).
    - Documentation establishing other financial support or subsidies – such as parental support, alimony, child support, educational scholarships and fellowships, pensions, Social Security, veteran's benefits, etc. Financial support or subsidy may include monetary contributions for the payment of monthly expenses received from adult children, dependents, and other people who are living in the individual's household, etc.
    - If available, the individual's Federal tax return(s), listing the members of the household.
    - If the applicant is filing on behalf of, or as a Special Immigrant Juvenile (SIJ), the fee waiver request should be supported by one of the following forms of evidence:
      - A recent state or juvenile court order establishing dependency or custodial assignment of the SIJ; or
      - A letter from a foster care home or similar agency overseeing the SIJ's custodial placement that describes the SIJ's inability to pay; or

- An approval notice on a Form I-797, Notice of Action, for a Form I-360, filed for the SIJ.

o If the individual provides sufficient proof that his or her household income is at or below 150 percent of the Federal Poverty Guidelines at the time of filing, the fee waiver will normally be approved, and no further information will be required.

- Step 3. Is the individual under financial hardship, due to extraordinary expenses or other circumstances, that renders the individual unable to pay the fee?

o The individual may demonstrate that he or she is under financial hardship due to extraordinary expenses or other circumstances affecting his or her financial situation to the degree that he or she is unable to pay the fee. Examples include unexpected and uninsured (or underinsured) medical bills, situations that could not normally be expected in the regular course of life events, or a medical emergency or catastrophic illness affecting the individual or the individual's dependents. If the individual is under financial hardship, the individual should demonstrate that he or she has suffered a sufficiently negative financial impact as a result of this hardship in a reasonably recent period preceding the filing of the fee-waiver request so as to render the applicant's income during that period insufficient to pay the fee.

o The applicant may submit documentation as follows to demonstrate that he or she is under financial hardship that renders him or her unable to pay the fee:
  - Documentation of all assets owned, possessed, or controlled by the individual and by his or her dependents. Assets include real estate, property, cash, checking and savings accounts, stocks, bonds, and annuities (except for pension plans and Individual Retirement Accounts (IRAs)).
  - Documentation concerning liabilities and expenses owed by the individual and his or her dependents, and any other expenses for which the individual is responsible. Liabilities and expenses include the cost of rent, mortgages, lease, the average monthly cost of food, utilities, child care and elder care, medical expenses, any tuition costs, commuting costs, and monthly payments of any lawful debts.
  - If the applicant cannot provide evidence of income, he or she should provide a description of the financial hardship and why he or she cannot provide any evidence of income. Affidavits from churches and other community-based organizations indicating that the applicant is currently receiving some benefit from that entity may be used as evidence of income.

- 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 reviewing all documentation and information submitted, consider whether cash or assets exist aside from income which could be liquidated without the applicant incurring a hardship. For example, the applicant may own stocks or other assets that could be easily liquidated.

(c) Processing Fee Waiver Requests.

(1) Effective Date. As of November 23, 2010, all pending and newly submitted fee waiver requests must be reviewed under these guidelines. These guidelines apply only to application and petition filing fees contained in **8 CFR 103.7(b)**.

(2) Notation on Form. After careful review of the fee-waiver request and supporting documentation, the fee-waiver approval or denial should be recorded in the receipt block of the underlying form for which the applicant is requesting a fee waiver. The fee-waiver decision should also be noted on the **Form I-912, Request for Fee Waiver**, if that is how the applicant submitted the request. In addition, the signature of the approving officer and any relevant comments should be written on the Form I-912. If the fee-waiver request is denied, send the applicant Form G-1054, Request for Fee Waiver Denial Letter. If reviewing an electronic version of the fee-waiver request, record the fee-waiver approval or denial in an electronic system and note the name of the USCIS employee making the fee-waiver decision.

2. The *AFM* **Transmittal Memoranda** button is revised by adding, in numerical order, the following entry:

AD 11-26 03/13/2011	**Chapter 10.9**	Provides guidance on considering and approving requests for fee waivers.

Use
This PM is intended solely for the guidance of USCIS personnel in the performance of their official duties. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable by law or by any individual or other party in removal proceedings, in litigation with the United States, or in any other form or manner.

Contact Information
Questions or suggestions regarding this PM should be addressed through appropriate channels to Headquarters Management Directorate, Office of Intake and Document Production.

EXHIBIT C

Request for Fee Waiver

Department of Homeland Security
U.S. Citizenship and Immigration Services

USCIS
Form I-912
OMB No. 1615-0116
Expires: 10/31/2021

For USCIS Use Only	Application Receipted At (Select **only one** box)	
	☐ **USCIS Field Office**	☐ **USCIS Service Center**
	☐ Fee Waiver Approved ☐ Fee Waiver Denied	☐ Fee Waiver Approved ☐ Fee Waiver Denied
	Date:_____ Date:_____	Date:_____ Date:_____

► **START HERE - Type or print in black ink.**

If you need extra space to complete any section of this request or if you would like to provide additional information about your circumstances, use the space provided in Part 8. Additional Information. Complete and submit as many copies of Part 8., as necessary, with your request.

Part 1. Basis for Your Request (Each basis is further explained in the **Specific Instructions** section of the Form I-912 Instructions)

Select at least one basis or more for which you may qualify and provide supporting documentation for any basis you select. You only need to qualify and provide documentation for one basis for U.S. Citizenship and Immigration Services (USCIS) to grant your fee waiver. If you choose, you may select more than one basis; you must provide supporting documentation for each basis you want considered.

1. ☐ My household income is at or below 150 percent of the Federal Poverty Guidelines (FPG). (Complete **Parts 2. - 3.**, and **Parts 5. - 7.**)
2. ☐ I have a financial hardship. (Complete **Part 2.**, and **Parts 4. - 7.**)

Part 2. Information About You (Requestor)

Provide information about yourself if you are requesting a fee waiver for a petition or application you are filing. If you are a parent or legal guardian filing for a child or person with a physical disability or developmental or mental impairment, provide information about the child or person for whom you are filing this request.

1. Full Legal Name

Family Name (Last Name)	Given Name (First Name)	Middle Name

2. Other Names Used (if any)

Provide all other names you have ever used, including aliases, maiden name, and nicknames.

Family Name (Last Name)	Given Name (First Name)	Middle Name

3. Alien Registration Number (A-Number) (if any)
► **A-**

4. USCIS Online Account Number (if any)
►

5. Date of Birth (mm/dd/yyyy)

6. U.S. Social Security Number (if any)
►

7. Marital Status

☐ Single, Never Married ☐ Married ☐ Divorced ☐ Widowed ☐ Marriage Annulled ☐ Separated

☐ Other (Explain)

Part 2. Information About You (Requestor)

8. List and provide the total number of applications and petitions for which you are requesting a fee waiver.

Form	Number
Total Number	

9. Are you applying for or have status or a granted approval as a battered spouse of an A, G, E-3, or H nonimmigrants; a battered spouse or child of a lawful permanent resident or U.S. citizen under INA section 240A(b)(2); a T nonimmigrant; a person with Temporary Protected Status; a U nonimmigrant; or a VAWA self -petitioner?

☐ Yes

☐ No

A. Receipt Number (if applicable)

►

Part 3. Household Income

Your Employment Status

1. Employment Status

☐ Employed (full-time, part-time, seasonal, self-employed) ☐ Unemployed or Not Employed ☐ Retired

☐ Other (Explain)

2. If you are currently unemployed, since when have you been unemployed (mm/dd/yyyy)?

A. If you are currently unemployed, are you currently receiving unemployment benefits?

☐ Yes

☐ No

Information About Your Spouse

3. If you are married or separated, does your spouse live in your household?

☐ Yes (add your spouse to the table below and provide his or her income in **Item Number 9.** below)

☐ No

A. If you answered "No" to **Item Number 3.**, does your spouse provide any financial support to your household?

☐ Yes (provide financial support income in **Item Number 10.** below)

☐ No

Your Household Size

4. Are you the person providing the primary financial support for your household?

☐ Yes

☐ No

Part 3. Household Income (continued)

If you answered "Yes" to **Item Number 4.**, type or print your name on the line marked "self" in the table below. Also provide income in **Item Number 8.** below. If you answered "No" to **Item Number 4.**, type or print your name on the line marked "self" in the table below and add the head of household's name on the line below yours.

Household Size								
Full Name	**Date of Birth**	**Relationship to You**	**Married**		**Full-Time Student**		**Is any income earned by this person counted towards the household income?**	
			Yes	**No**	**Yes**	**No**	**Yes**	**No**
		Self	☐	☐	☐	☐	☐	☐
			☐	☐	☐	☐	☐	☐
			☐	☐	☐	☐	☐	☐
			☐	☐	☐	☐	☐	☐
							Total Household Size (including self)	

Your Annual Household Income

5. Did you file a federal tax return for the last year?

☐ Yes

☐ No

If you answered "No" to **Item Number 5.**, provide an answer to **Item Number 7.**

6. Did your household members file tax returns for the last year?

☐ Yes

☐ No

If you answered "No" to **Item Number 6.**, provide an answer to **Item Number 7.**

If you answered "No" to **Item Number 6.**, which household member(s) did not file a tax return?

7. If you or your household member did not file a tax return for the last year, select the reason for not filing and provide an explanation. See I-912 Instructions for required documentation.

☐ I/we plan to file the tax return before the due date this year.

☐ I/we are not required to file a tax return for the current or previous year.

☐ I/we filed for an extension.

☐ I/we are not going to file.

Explanation:

Part 3. Household Income (continued)

Provide information about your income and the income of all family members counted as part of your household. You must list all amounts in U.S. dollars.

8. Your Annual Income $ ____

9. Annual Income of All Family Members Counted as Part of Your Household (Do not include the amount provided in **Item Number 8.**) $ ____

10. Total Additional Income or Financial Support (Do not include the amount provided in **Item Numbers 8.** or **9.**) $ ____

If you received additional income on a continuing monthly or annual basis for the most recent full year, and it is NOT listed in your Federal tax return, provide the amount of additional income below (for example, child support). Attach evidence of the additional income. You must add all of the additional income and financial support amounts and put the total amount in the space provided. Type or print "0" in the total box if no additional income is received.

Type of Income			Annual Amount (in dollars)
Parental Support	☐ Yes	☐ No	
Spousal Support (Alimony)	☐ Yes	☐ No	
Child Support	☐ Yes	☐ No	
Educational Stipends	☐ Yes	☐ No	
Royalties	☐ Yes	☐ No	
Pensions	☐ Yes	☐ No	
Unemployment Benefits	☐ Yes	☐ No	
Social Security Benefits	☐ Yes	☐ No	
Veteran's Benefits	☐ Yes	☐ No	
Financial Support from Adult Children, Dependents, Other People Living in the Household	☐ Yes	☐ No	
Other: (Explanation Below)	☐ Yes	☐ No	
Total Additional Income and Financial Support			

11. Total Annual Household Income (add the amounts from **Item Numbers 8.**, **9.**, and **10.**) $ ____

12. Has anything changed since the date you filed your Federal tax returns? (For example, your marital status, income, or number of dependents.) ☐ Yes ☐ No

If you answered "Yes" to **Item Number 12.**, provide an explanation below. Provide documentation if available. You may also use this space to provide any additional information about your circumstances that you would like U.S. Citizenship and Immigration Services (USCIS) to consider.

Part 4. Financial Hardship

If you selected **Item Number 2.** in **Part 1.**, complete this section.

1. If you or any family members have a situation that has caused you to incur expenses, debts, or loss of income, describe the situation in the box below. Specify the amounts of the expenses, debts, and income losses in as much detail as possible. Examples may include medical expenses, job loss, eviction, victimization, and homelessness.

2. If you have cash or assets that you can quickly convert to cash, list those in the table below. For example, bank accounts, stocks, or bonds. (Do not include retirement accounts.)

Assets	
Type of Asset	**Value** (U.S. Dollars)
Total Value of Assets	

3. Total Monthly Expenses and Liabilities $ ____

Provide the total monthly amount of your expenses and liabilities. You must add all of the expense and liability amounts and type or print the total amount in the space provided. Type or print "0" in the total box if there are none. Select the types of expenses or liabilities you have each month and provide evidence of monthly payments, where possible.

- ☐ Rent and/or Mortgage
- ☐ Food
- ☐ Utilities
- ☐ Child and/or Elder Care
- ☐ Insurance
- ☐ Loans and/or Credit Cards
- ☐ Car Payment
- ☐ Commuting Costs
- ☐ Medical Expenses
- ☐ School Expenses
- ☐ Other ____

Part 5. Requestor's Statement, Contact Information, Certification, and Signature

NOTE: Read the **Penalties** section of the Form I-912 Instructions before completing this section.

You must complete, sign, and date Form I-912 and provide the required documentation. If an individual is under 14 years of age, a parent or legal guardian may sign the request on their behalf. USCIS rejects any Form I-912 that is not signed and may deny a request that does not provide required documentation.

NOTE: Select the box for either **Item A.** or **B.** in **Item Number 1.** If applicable, select the box for **Item Number 2.**

1. Requestor's Statement Regarding the Interpreter

A. ☐ I can read and understand English, and I have read and understand every question and instruction on this request and my answer to every question.

B. ☐ The interpreter named in **Part 6.** read to me every question and instruction on this request and my answer to every question in _____, a language in which I am fluent, and I understood everything.

2. Requestor's Statement Regarding the Preparer

☐ At my request, the preparer named in **Part 7.**, _____, prepared this request for me based only upon information I provided or authorized.

Requestor's Contact Information

3. Requestor's Daytime Telephone Number

4. Requestor's Mobile Telephone Number (if any)

5. Requestor's Email Address (if any)

Requestor's Certification

Copies of any documents I have submitted are exact photocopies of unaltered, original documents, and I understand that USCIS may require that I submit original documents to USCIS at a later date. Furthermore, I authorize the release of any information from any and all of my records that USCIS may need to determine my eligibility for the immigration benefit that I seek.

I further authorize release of information contained in this request, in supporting documents, and in my USCIS records, to other entities and persons where necessary for the administration and enforcement of U.S. immigration law.

I certify, under penalty of perjury, that I provided or authorized all of the information in my request, I understand all of the information contained in, and submitted with, my request, and that all of this information is complete, true, and correct.

WARNING: If you knowingly and willfully falsify or conceal a material fact or submit a false document with your Form I-912, USCIS will deny your fee waiver request and may deny any other immigration benefit. In addition, you may face severe penalties provided by law and may be subject to criminal prosecution.

Requestor's Signature

6. Requestor's Signature ➡

Date of Signature (mm/dd/yyyy)

NOTE TO ALL REQUESTORS: If you do not completely fill out this request or fail to submit required documents listed in the Instructions, USCIS may deny your request.

Part 6. Interpreter's Contact Information, Certification, and Signature

Interpreter's Full Name

1. Interpreter's Family Name (Last Name) | Interpreter's Given Name (First Name)

2. Interpreter's Business or Organization Name (if any)

Interpreter's Mailing Address

(USPS ZIP Code Lookup)

3. Street Number and Name | Apt. Ste. Flr. Number

City or Town | State | ZIP Code

Province | Postal Code | Country

Interpreter's Contact Information

4. Interpreter's Daytime Telephone Number

5. Interpreter's Mobile Telephone Number (if any)

6. Interpreter's Email Address (if any)

Interpreter's Certification

I certify, under penalty of perjury, that:

I am fluent in English and _____, which is the same language specified in **Part 5.**, **Item B.** in **Item Number 1.**, and I have read to this requestor in the identified language every question and instruction on this request and his or her answer to every question. The requestor informed me that he or she understands every instruction, question, and answer on the request, including the **Requestor's Certification**, and has verified the accuracy of every answer.

Interpreter's Signature

7. Interpreter's Signature | Date of Signature (mm/dd/yyyy)

Part 7. Contact Information, Declaration, and Signature of the Person Preparing this Request, if Other Than the Requestor

Preparer's Full Name

1. Preparer's Family Name (Last Name) | Preparer's Given Name (First Name)

2. Preparer's Business or Organization Name (if any)

Part 7. Contact Information, Declaration, and Signature of the Person Preparing this Request, if Other Than the Requestor (continued)

Preparer's Mailing Address

3. Street Number and Name | Apt. Ste. Flr. ☐ ☐ ☐ Number

City or Town | State | ZIP Code

Province | Postal Code | Country

Preparer's Contact Information

4. Preparer's Daytime Telephone Number

5. Preparer's Mobile Telephone Number (if any)

6. Preparer's Email Address (if any)

Preparer's Statement

7. A. ☐ I am not an attorney or accredited representative but have prepared this request on behalf of the requestor and with the requestor's consent.

B. ☐ I am an attorney or accredited representative and my representation of the requestor in this case ☐ extends ☐ does not extend beyond the preparation of this request.

NOTE: If you are an attorney or accredited representative, you may need to submit a completed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, or G-28I, Notice of Entry of Appearance as Attorney In Matters Outside the Geographical Confines of the United States, with this request.

Preparer's Certification

By my signature, I certify, under penalty of perjury, that I prepared this request at the request of the requestor. The requestor then reviewed this completed request and informed me that he or she understands all of the information contained in, and submitted with, his or her request, including the **Requestor's Certification**, and that all of this information is complete, true, and correct. I completed this request based only on information that the requestor provided to me or authorized me to obtain or use.

Preparer's Signature

8. Preparer's Signature | Date of Signature (mm/dd/yyyy)

Part 8. Additional Information

If you need extra space to provide any additional information within this request, use the space below. If you need more space than what is provided, you may make copies of this page to complete and file with this request or attach a separate sheet of paper. Type or print your name and A-Number (if any) at the top of each sheet; indicate the **Page Number**, **Part Number**, and **Item Number** to which your answer refers; and sign and date each sheet.

1. Family Name (Last Name) | Given Name (First Name) | Middle Name

2. A-Number (if any) ► **A-**

3. **A.** Page Number **B.** Part Number **C.** Item Number

D.

4. **A.** Page Number **B.** Part Number **C.** Item Number

D.

5. **A.** Page Number **B.** Part Number **C.** Item Number

D.

6. **A.** Page Number **B.** Part Number **C.** Item Number

D.

EXHIBIT D

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

U.S. Citizenship and Immigration Services

October 25, 2019 PA-2019-06

Policy Alert

SUBJECT: Fees for Submission of Benefit Requests

Purpose

U.S. Citizenship and Immigration Services (USCIS) is issuing policy guidance in the USCIS Policy Manual regarding submission and acceptance of fees for immigration benefit requests.

Background

In general, requestors must include any required fees with the submission of a benefit request to USCIS.[1] Certain forms or categories of requestors may be exempt from fees. USCIS also has the regulatory authority to waive certain fees if the requestor is unable to pay the fee of the immigration benefit being sought.[2] USCIS is now updating its policies on fee waiver requests.

This guidance, contained in Volume 1, is effective December 2, 2019 and applies prospectively to fee waiver requests postmarked on or after that date. On that date, this policy update will supersede the guidance found in Chapters 10.9 and 10.10 of the Adjudicator's Field Manual (AFM), related AFM appendices, and related policy memoranda. USCIS will accept requests filed on the previous or latest edition of the Request for Fee Waiver (Form I-912), or other ways of submitting requests as provided in the related AFM guidance, that are postmarked before December 2, 2019. For requests postmarked on or after that date, USCIS will only accept the latest edition of Form I-912 and will adjudicate such requests under the updated policy.[3]

Policy Highlights

- Establishes the eligibility criteria for fee waivers based on inability to pay: household income at or below 150 percent of the Federal Poverty Guidelines, or financial hardship.
- Establishes that the Request for Fee Waiver (Form I-912) must be submitted and written statements will no longer be accepted on or after December 2, 2019.
- Clarifies documentation requirements for fee waivers, including income tax transcripts.
- Clarifies that requestors seeking to waive fees for immigration benefits based on the Violence Against Women Act[4] or T or U nonimmigrant status are not required to provide income documentation for the abuser or human trafficker.

Citation: Volume 1: General Policies and Procedures, Part B, Submission of Benefit Requests, Chapter 3, Fees [1 USCIS-PM B.3] and Chapter 4, Fee Waivers [1 USCIS-PM B.4].

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[1] See 8 CFR 103.7(a)(1).
[2] See 8 CFR 103.7(c). USCIS is primarily funded by application and petition fees. See INA 286(m).
[3] See https:www.uscis.gov/i-912 for the latest edition of Form I-912.
[4] See Pub. L. 103–322 (September 13, 1994).

EXHIBIT E

U.S. Citizenship and Immigration Services

Policy Manual

The USCIS Policy Manual is the agency's centralized online repository for USCIS' immigration policies. The USCIS Policy Manual will ultimately replace the Adjudicator's Field Manual (AFM), the USCIS Immigration Policy Memoranda site, and other policy repositories.

About the Policy Manual

U.S. Citizenship and Immigration Services (USCIS) makes decisions on benefit and service requests that not only affect aliens and their future, but also the well-being of U.S. citizens, families, organizations, businesses, industries, localities, states, the nation, and international communities. Accordingly, USCIS strives to secure America's promise as a nation of immigrants by providing accurate and useful information, promoting awareness and understanding of citizenship rights and responsibilities, and making adjudication decisions in a consistent and accurate manner that furthers the goals and integrity of our nation's immigration system. Our policies drive our benefit and services decisions and ensure that our guidance to USCIS officers who make those decisions reflects our agency's mission, and strategic vision. These policies also greatly affect our interaction with USCIS' diverse stakeholder community.

USCIS has undertaken a comprehensive review of our immigration policies to improve quality, transparency, and efficiency. As a result of this extensive and ongoing review, USCIS has created the USCIS Policy Manual, which is the agency's centralized online repository for USCIS' immigration policies. The USCIS Policy Manual will ultimately replace the Adjudicator's Field Manual (AFM), the USCIS Immigration Policy Memoranda site, and other policy repositories. The manual is structured to house several volumes pertaining to different areas of immigration benefits administered by the agency such as citizenship and naturalization, adjustment of status, admissibility, protection and parole, nonimmigrants, refugees, asylees, immigrants, waivers, and travel and employment.

The USCIS Policy Manual is organized into different volumes, parts, and chapters that present policies in a logical and sequential manner. The USCIS Policy Manual provides several user-friendly features and enhancements. These features include up-to-the-minute comprehensive policy updates, an expanded table of contents, and links to related Immigration and Nationality Act (INA) sections, Code of Federal Regulations (CFR), and public use forms. The manual is also equipped with a keyword search function, which will make locating policy and related information faster, easier, and less time consuming. Citations of statutes, regulations, case law, authoritative sources, and other explanatory references appear in footnotes rather than the body of the text. Tables and charts supplement and simplify policy information to facilitate understanding of complex topics and instructions.

The USCIS Policy Manual provides transparency, including outlining policies that are easy to understand, while also furthering consistency, quality, and efficiency. The USCIS Policy Manual contains the official policies of USCIS and must be followed by all USCIS officers in the performance of their duties. The Policy Manual does not create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

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Last Reviewed/Updated: 11/06/2019

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Volume 1 - General Policies and Procedures

Part A - Public Services

Chapter 1 - Purpose and Background

A. Purpose

USCIS is the government agency that administers lawful immigration to the United States. USCIS has nearly 20,000 government employees and contractors working at more than 200 offices around the world. USCIS ensures its employees have the

Footnotes

1. [^] This section specifically addresses complaints that do not involve egregious or criminal misconduct. For information on the Office of Security and Integrity's policy on reporting criminal and egregious misconduct, see Section C, Reporting Allegations of Misconduct [1 USCIS-PM A.9(C)].

2. [^] See Appendix: Dissatisfaction with USCIS: Terms and Definitions for information on where to send complaints.

3. [^] See Appendix: Dissatisfaction with USCIS: Terms and Definitions for information on how to contact the OIG.

4. [^] See Chapter 3, Forms of Assistance, Section C, Telephone [1 USCIS-PM A.3(C)].

5. [^] USCIS employees are also subject to mandatory reporting requirements for known or suspected misconduct by federal employees and contractors.

6. [^] Physical assault may include grabbing, fondling, hitting, or shoving.

7. [^] See Chapter 7, Privacy and Confidentiality [1 USCIS-PM A.7].

8. [^] Allegations reported directly to the DHS OIG may also be reported through a local DHS OIG field office.

9. [^] A list of OIG Office of Investigations field offices is available on the DHS OIG's website.

10. [^] See the File a Civil Rights Complaint page on the DHS website.

11. [^] See How to File a Complaint with the Department of Homeland Security (PDF), issued October 3, 2012.

Part B - Submission of Benefit Requests

Chapter 1 - Purpose and Background

Note: This guidance is effective December 2, 2019. See Policy Alert (PDF, 281 KB).

A. Purpose

Aliens seeking immigration benefits in the United States must generally request benefits by filing the appropriate USCIS form(s) with USCIS.[1] Proper submission of benefit requests provides USCIS the opportunity to determine whether a person is initially eligible for the benefit requested and facilitates an efficient management of requests.[2]

B. Background

With the Immigration Act of 1891, the federal government assumed direct control of inspecting, admitting, rejecting, and processing all immigrants seeking admission to the United States.[3] On January 2, 1892, the Immigration Service opened Ellis Island in New York Harbor. The Immigration Service began collecting arrival manifests from each incoming ship. Inspectors then questioned arrivals about their admissibility and noted their admission or rejection on the manifest records.[4]

Over the years, different federal government departments and offices have adjudicated immigration benefit requests. The process of submitting benefit requests has also changed over time. Today, requestors generally seek benefits from USCIS by submitting specific forms; the forms also help guide requestors in collecting and submitting necessary evidence. USCIS uses forms to establish the record, verify identity, and adjudicate the benefit request.

USCIS is primarily funded by immigration and naturalization benefit request fees charged to applicants and petitioners.[5] Fees collected from individuals and entities filing immigration benefit requests are deposited into the Immigration Examinations Fee Account (IEFA). These fee collections fund the cost of fairly and efficiently adjudicating immigration benefit requests, including those provided without charge to refugee, asylum, and certain other applicants.

C. Legal Authorities

- INA 103 - Powers and duties of the Secretary, Under Secretary, and Attorney General
- 8 CFR 103.2 - Submission and adjudication of benefit requests
- 8 CFR 103.7 - Fees

Footnotes

---

1. [^] See 8 CFR 103.2(a)(1).

2. [^] The terms “benefit request” and “immigration benefit request,” as used in this Part, include, but are not limited to, all requests funded by the Immigration Examinations Fee Account (IEFA). These terms may also refer to forms or requests not directly resulting in an immigration benefit, such as those resulting in an exercise of prosecutorial discretion by DHS.

3. [^] See Pub. L. 55-551 (March 3, 1891).

4. [^] See the USCIS History and Genealogy website for additional information. See Overview of Legacy Immigration and Naturalization Service (INS) History (PDF, 285 KB).

5. [^] See INA 286(m). See 8 CFR 103.7(c).

Chapter 2 - Signatures [Reserved]

Chapter 3 - Fees

Note: This guidance is effective December 2, 2019. See Policy Alert (PDF, 281 KB).

Requestors must include any required fees with the submission of a benefit request to USCIS.[1] This payment must be in U.S. currency.

The fee amount for each benefit request is controlled by regulation and identified in the corresponding form instructions.[2] The total fee amount for each form is not determined solely by the fee required for the associated form.[3] Additional fees may be required, such as the biometric services fee or the fraud detection and prevention fee.[4] The additional services needed in a

4. [^] See 8 CFR 103.7(b)(1). See 8 CFR 103.7(b)(1)(i)(HHH).

5. [^] See 8 CFR 103.7(c). See also INA 286(m) (authorizing USCIS fees to recover the costs of services provided without charge).

6. [^] See 8 CFR 103.7(a)(2).

7. [^] See 8 CFR 103.7(a)(2).

8. [^] See 8 CFR 103.7(a)(2).

9. [^] See 8 CFR 103.2(b)(8)(ii). A petitioner or applicant may need to provide additional evidence to establish eligibility for the benefit sought at the time of an interview or after USCIS issues a Request for Evidence (RFE).

Chapter 4 - Fee Waivers

Note: This guidance is effective December 2, 2019. See Policy Alert (PDF, 281 KB).

Currently, USCIS may waive the fee for certain immigration benefit requests when the individual requesting the benefit is unable to pay the fee.[1] Applicants, petitioners, and requestors who pay a fee cover the cost of processing requests that are fee-exempt, fee-waived, or fee-reduced.

A. General

1. Eligibility

A benefit requestor may request a fee waiver from USCIS if:

- The benefit requestor is unable to pay the requisite fee, and
- The form is eligible for a fee waiver.

There is no fee required for filing a fee waiver request.

If a benefit request includes both the appropriate filing fee and a fee waiver request, USCIS does not adjudicate the fee waiver request since the person will not be able to establish an inability to pay. In such a case, USCIS deposits the fee and processes the immigration benefit request, if it is otherwise acceptable.

2. Inability to Pay Criteria and Burden of Proof

The burden of proof is on the requestor to establish an inability to pay under USCIS policy. USCIS reviews two criteria to determine an applicant's inability to pay:

- Household income at or below 150 percent of the Federal Poverty Guidelines (FPG); or
- Financial hardship.

For USCIS to find an inability to pay, the officer must reasonably determine that the applicant or petitioner is unlikely to pay the fee based on the evidence.

3. Filing of Fee Waiver Request

To request a fee waiver, a benefit requestor must submit a:

- Request for Fee Waiver (Form I-912); and
- Documentation establishing eligibility based on an inability to pay through one of the two criteria.

The HHS Poverty Guidelines for Fee Waiver Request (Form I-912P) provide the income thresholds per year.

The person requesting the fee waiver must sign the request. A parent or legal guardian may sign for children under 14 years old or for an incapacitated adult for whom he or she is the legal guardian. The person submitting the benefit request on behalf of a child or incapacitated adult must provide evidence of the claimed relationship and authority to sign.

Failure to Meet Other Filing Requirements

USCIS does not review fee waiver requests submitted for benefit requests rejected for reasons unrelated to the fee. For example, USCIS does not review fee waiver requests in cases involving an immigration benefit application that is defective due to a missing signature.

B. Forms Eligible for Fee Waivers

A benefit requestor may only submit a request for a fee waiver for certain forms.[2] There are three general categories of fee waivers allowed for forms:

- General waivers;
- Conditional waivers; and
- Humanitarian waivers.

1. General Waivers

The following table provides a list of forms for which USCIS may waive the fees based on a requestor's inability to pay.

General Fee Waivers
Biometrics services fee (except for the biometric services fee required for an Application for Provisional Unlawful Presence Waiver (Form I-601A) filed under 8 CFR 212.7(e))
Application to Replace Permanent Resident Card (Form I-90)
Application for Relief Under Former Section 212(c) of the Immigration and Nationality Act (INA) (Form I-191)[3]
Petition to Remove Conditions on Residence (Form I-751)
Application for Employment Authorization (Form I-765) (unless filing under category (c)(33), Deferred Action for Childhood Arrivals)
Application for Family Unity Benefits (Form I-817)
Application for Temporary Protected Status (Form I-821)[4]
Application for Suspension of Deportation or Special Rule Cancellation of Removal (Form I-881)[5]

General Fee Waivers
Application to File Declaration of Intention (Form N-300)
Request for a Hearing on a Decision in Naturalization Proceedings (Form N-336)[6]
Application for Naturalization (Form N-400)
Application to Preserve Residence for Naturalization Purposes (Form N-470)
Application for Replacement of Naturalization/Citizenship Document (Form N-565)
Application for Certificate of Citizenship (Form N-600)
Application for Citizenship and Issuance of Certificate under Section 322 (Form N-600K)

2. Conditional Waivers

Certain fee waivers depend on specific conditions. The following tables provide a list of forms for which USCIS may waive fees based on the requestor's inability to pay and meet the specified conditions.

Conditional Fee Waivers
Petition for a Nonimmigrant Worker (Form I-129) for an applicant for E-2 CNMI investor nonimmigrant status under 8 CFR 214.2(e)(23)
Application for Travel Document (Form I-131) for those applying for humanitarian parole
Application for Advance Permission to Enter as Nonimmigrant (Form I-192) for an applicant who is exempt from the public charge grounds of inadmissibility[7]
Application for Waiver of Passport and/or Visa (Form I-193) for an applicant who is exempt from the public charge grounds of inadmissibility[8]
Notice of Appeal or Motion (Form I-290B) if the underlying benefit request was fee exempt, the fee was waived, or it was eligible for a fee waiver
Application to Register Permanent Residence or Adjust Status (Form I-485) for an applicant who is exempt from the public charge grounds of inadmissibility[9]
Application to Extend/Change Nonimmigrant Status (Form I-539) for an applicant with any benefit request as specified by INA 245(l)(7) or an applicant for E-2 Commonwealth of the Northern Mariana Islands (CNMI) investor nonimmigrant status under 8 CFR 214.2(e)(23)
Application for Waiver of Grounds of Inadmissibility (Form I-601) for an applicant who is exempt from the public charge grounds of inadmissibility[10]
Notice of Appeal of Decision Under Sections 245A or 210 of the Immigration and Nationality Act (Form I-694) if the underlying application or petition was fee exempt, the filing fee was waived, or was eligible for a fee waiver

As noted in the table above, USCIS may waive fees for a Form I-485 applicant who is exempt from the public charge grounds of inadmissibility.[11] The table below provides a general list of adjustment of status applicants who are exempt from public charge and therefore may qualify for a fee waiver.

Form I-485 Conditional Fee Waivers – Exemption from Public Charge

Form I-485 Conditional Fee Waivers – Exemption from Public Charge
Asylees[12]
Special immigrant juveniles
Applications under the Cuban Adjustment Act (CAA)[13]
Applications under the Haitian Refugee Immigration Fairness Act (HRIFA)[14]
Applications under the Nicaraguan Adjustment and Central American Relief Act (NACARA)[15] or similar provisions
Lautenberg Parolees

3. Humanitarian Fee Waivers

USCIS may also waive fees for any benefit request or associated form, including the adjustment of status application, for humanitarian purposes as authorized by statute. This includes petitions not otherwise eligible for a fee waiver or eligible only for conditional fee waivers.[16] Some of these categories are also exempt from the public charge inadmissibility determination and therefore would also be eligible for a fee waiver on that basis.[17]

The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)[18] requires DHS to permit certain benefit requestors to apply for fee waivers for "any fees associated with filing an application for relief through final adjudication of the adjustment of status."[19] DHS interprets this provision[20] to mean that, in addition to the primary benefit request, an applicant who files any form that may be filed with the primary benefit request or the adjustment of status application must be provided the opportunity to request a fee waiver.[21] The table below lists, by immigration category, the primary benefit requests and associated form(s) for which DHS must provide an opportunity to request a fee waiver.[22]

Humanitarian Fee Waiver Categories: Forms Eligible for Fee Waiver

Category	Primary Benefit Request	Associated USCIS Forms
Violence Against Women Act (VAWA)[23] self-petitioners[24]	• Application to Register Permanent Residence or Adjust Status (Form I-485) • Petition to Remove Conditions on Residence (Form I-751)	• Application for Travel Document (Form I-131)[25] • Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) • Notice of Appeal or Motion (Form I-290B) • Application for Waiver of Grounds of Inadmissibility (Form I-601) • Application for Employment Authorization (Form I-765)

Category	Primary Benefit Request	Associated USCIS Forms
Victims of severe form of trafficking (T nonimmigrant status) [26]	• Application to Register Permanent Residence or Adjust Status (Form I-485)[27]	• Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) • Application for Waiver of Passport and/or Visa (Form I-193) • Application for Travel Document (Form I-131) • Notice of Appeal or Motion (Form I-290B) • Application to Change/Extend Nonimmigrant Status (Form I-539) • Application for Waiver of Grounds of Inadmissibility (Form I-601) • Application for Employment Authorization (Form I-765)
Victims of criminal activity (U nonimmigrant status) [28]	• Petition for Qualifying Family Member of a U Nonimmigrant (Form I-929) • Application to Register Permanent Residence or Adjust Status (Form I-485)	• Application for Travel Document (Form I-131) • Application for Advance Permission to Enter as a Nonimmigrant (Form I-192) • Application for Waiver of Passport and/or Visa (Form I-193) • Notice of Appeal or Motion (Form I-290B) • Application to Change/Extend Nonimmigrant Status (Form I-539) • Application for Employment Authorization (Form I-765)
Battered spouse or child of a lawful permanent resident or U.S. citizen[29]	• Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents (EOIR-42B (PDF)) (DOJ form and immigration judge determines fee waiver)	• Waiver of Grounds of Inadmissibility (Form I-601)

Category	Primary Benefit Request	Associated USCIS Forms
Temporary Protected Status[30]	• Application for Temporary Protected Status (Form I-821)	• Application for Employment Authorization (Form I-765) • Application for Waiver of Grounds of Inadmissibility (Form I-601) • Application for Travel Document (Form I-131)

Applications related to Deferred Action for Childhood Arrivals (DACA) filings,[31] including a stand-alone Form I-765 filed, are not eligible for a fee waiver.

4. Third-Party Fee Waiver Request

An immigration judge may grant fee waiver requests in an immigration court proceeding.[32] In addition, an immigration judge may request USCIS to consider a fee waiver request. The requestor must submit a Request for Fee Waiver (Form I-912) and evidence of eligibility under one of the two criteria.

C. Income At or Below 150 Percent of Federal Poverty Guidelines

The applicant must clearly demonstrate an inability to pay the fees in order to qualify for a fee waiver.[33] Inability to pay the fee is based on the applicant's household income.

The applicant must demonstrate that his or her total household income at the time of filing is at or below 150 percent of the current Federal Poverty Guidelines (FPG) based on household size. USCIS does not review the person's past or future income or financial situation when determining household income. The Secretary of the Department of Health and Human Services (HHS) establishes the FPG annually.[34]

1. Household

For fee waiver review purposes, a household[35] may include:

- The applicant;
- The head of household (if not the applicant);
- The applicant's spouse, if living with the applicant (if the applicant and spouse are separated or not living together, then the spouse is not included as part of the household);[36] or
- Any family members living in the applicant's household who are dependent on the applicant's income, the spouse's income, or the head of household's income.

Family members living in the applicant's household include the:

- Applicant's children or legal wards who are unmarried and under 21 years of age;
- Applicant's children or legal wards who are unmarried, are over 21 years of age but under 24 years of age, and are full-time students;

- Applicant's children or legal wards who are unmarried and for whom the applicant is the legal guardian because the child or legal ward is physically or developmentally disabled, or mentally impaired to the extent that the child or legal ward cannot adequately care for him or herself, and cannot establish, maintain, or re-establish his or her own household;
- Applicant's parents; and
- Any other dependents listed on the applicant's federal income tax return, or the spouse's or head of household's federal income tax return.[37]

Head of Household

In general, the head of the household is the person who files the most recent federal tax return with the Internal Revenue Service (IRS) for the household, or the person who earns the majority of the income for the household. Persons applying under the special immigrant juvenile (SIJ) classification are considered part of their own household without including any foster or group home household members.

People who are cohabitating with the applicant, but not financially supported by the applicant, such as roommates or nannies, are not included in the household for the purpose of a fee waiver request.

2. Documentation

To demonstrate the household income, the applicant must provide:

- A copy of each household member's most recent federal tax return transcript; or if a tax transcript is not available a recent Form W-2 and a Form SSA-1099 (if applicable); and
- Documentation of additional financial assistance.

If the applicant's income has changed since the tax return filing, because of unemployment, the applicant must provide evidence of unemployment such as a termination letter or unemployment insurance receipt. If the applicant's income has changed since the tax return filing due to a change in employment, the applicant must provide information on the current employment and income, such as recent pay statements or W-2 forms.

If the applicant resides and filed tax returns in a U.S. territory, he or she must submit the tax return transcript from the territory instead of a federal tax return transcript if no federal tax return was required.

Tax Returns

If the request is filed between January 1 and April 15, and the person has not yet filed the previous year's return, the requestor must submit the tax returns transcript for the most recently filed year.[38] The person is not required to have the IRS certify the transcript.

USCIS uses the adjusted gross income (AGI) from IRS Form 1040 to calculate annual income. If the person is submitting a W-2 or pay statements, USCIS uses the gross pay (pay before taxes and any other withholdings), including any overtime and irregular hours as listed to calculate the annual income.

In determining total household income, USCIS adds any Social Security income (as reflected on the SSA-1099) to the AGI in the tax return.

Earned Income Tax Credit (EITC) statements, Miscellaneous Income (Form 1099-MISC), and Certain Government Payments (Form 1099-G) are not acceptable as proof of income without the tax return transcripts, W-2s, or Social Security statements.

The applicant may provide additional documentation to establish marital status and household size. If the person's current situation is different from the documentation provided, he or she must provide an explanation regarding the inconsistency in the documentation. For example, a tax return transcript that indicates the person is married but the person is currently

separated or states in the fee waiver request that he or she is single, must provide an additional explanation for the inconsistency and the documentation for income.

An applicant may use IRS Form 4506-T (PDF) to request income tax transcripts, a copy of Form W-2, or Form 1099-G, from the IRS or to establish that no IRS transcript is available.

If the applicant has provided tax returns as part of another immigration application or petition, such as an affidavit of support, the applicant does not need to submit additional tax return transcripts. USCIS will review the affidavit of support for any inconsistencies with the fee waiver request.

VAWA, T, and U-Based Applicants

Applicants seeking a fee waiver for any immigration benefits (such as for adjustment of status) based on VAWA or T or U nonimmigrant status do not need to provide the income of any household member, including a spouse, who is or was their abuser or human trafficker. Persons listed as a dependent on an income tax return and applying for any immigration benefits based on a pending or approved petition or application for VAWA benefits or T or U nonimmigrant status also do not need to provide the income of any household member, including a spouse, if that member is or was their abuser or human trafficker.

USCIS considers whether a person is unable to obtain proof of income (or proof of household members' income) due to victimization such as trafficking or abuse. The person must describe the situation in sufficient detail on the form to substantiate his or her inability to pay, as well as his or her inability to obtain the required documentation. In addition, the person must provide any available documentation of his or her income, such as pay stubs or affidavits from religious institutions, non-profits, or other community-based organizations, verifying that he or she is currently receiving some benefit or support from that entity and attesting to his or her financial situation.

Special Immigrant Juveniles

An SIJ who files a fee waiver request[39] for any form is not required to provide proof of income. However, the fee waiver request must include one of the following forms of evidence:

- A final state or juvenile court order establishing dependency or custodial placement of the SIJ;
- A letter from a foster care home or similar agency overseeing the SIJ's custodial placement that describes the SIJ's inability to pay; or
- An approval notice on a Notice of Action (Form I-797) for a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360), filed for the SIJ.

SIJs are considered part of their own household, without including any foster or group home household members.

An officer may verify in the available systems whether the requestor has applied for, or received, SIJ classification.

Children in Foster Care

A child in foster care[40] must submit a valid fee waiver request using Form I-912. As evidence of lack of income, USCIS may accept a letter from a foster care home or similar agency overseeing the foster child's custodial placement that describes the child's inability to pay. The income of a child in foster care does not include any income from foster or group home household members.

3. Additional Financial Assistance

The table below includes the types of financial assistance that are included as part of the total household income and must be included as income in the fee waiver request. The applicant must also provide documentation of each type of additional

financial assistance.

Additional Financial Assistance	
Parental support	Alimony
Child support	Educational stipends
Pensions	Social Security
Royalties	Veteran's benefits
Unemployment benefits	Consistent or regular financial support from adult children, parents, dependents, or other people living in the applicant's household
A court order of any child support or documentation from an agency providing other income or financial assistance	

D. Financial Hardship

The alien may demonstrate that he or she is under financial hardship due to extraordinary expenses or other circumstances affecting his or her financial situation to the degree that he or she is unable to pay the fee. If the applicant is under financial hardship, the applicant should demonstrate that he or she has suffered a substantial negative financial impact as a result of this hardship in a reasonably recent period preceding the filing of the fee waiver request so as to render the applicant's income during that period insufficient to pay the fee. For example, an alien may face financial hardship due to medical expenses of family members, unemployment, eviction, victimization, and homelessness.

Documentation

The applicant may submit documentation as follows to demonstrate that he or she is under financial hardship that renders him or her unable to pay the fee:

- Documentation of income;
- Documentation of all assets owned, possessed, or controlled by the applicant and dependents; and
- Documentation concerning liabilities and expenses owed by the alien and dependents, and any other expenses for which the alien is responsible.

The table below provides a list of assets and liabilities that may be part of the fee waiver request.

Examples of Documentation of Financial Hardship

Assets	Liabilities
• Real estate property; • Cash; • Checking and savings accounts; and • Stocks, bonds, and annuities (except for pension plans and Individual Retirement Accounts (IRAs)).	• Rent or mortgage; • Average monthly cost of food; • Utilities; • Child care and elder care; • Insurance; • Loans and credit cards; • Car payment; • Commuting costs; • Medical expenses; and • School expenses.

If the applicant cannot provide evidence of income, he or she should provide information and documentation as provided below.

1. Applicants Without Income

If the applicant has no income due to unemployment, homelessness, or other factors, he or she must provide:

- A detailed description of his or her financial situation that demonstrates eligibility for the fee waiver;
- Request for Transcript of Tax Return (IRS Form 4506-T) or Wage and Tax Statement (IRS Form W-2) or a statement that no tax returns or W-2s are available from the IRS;
- If the person is receiving support services, an affidavit from a religious institution, non-profit, or community-based organization verifying the person is currently receiving some benefit or support from that entity and attesting to the applicant's financial situation; and
- Evidence of unemployment, such as a termination letter or unemployment insurance receipt.

VAWA, T, and U-Based Applicants

USCIS considers whether an applicant is unable to obtain proof of income due to alleged victimization such as trafficking or abuse. The applicant must describe the situation in sufficient detail on the form to substantiate his or her inability to pay, as well as his or her inability to obtain the required documentation.

In addition, the applicant must provide any available documentation of his or her income, such as a W-2, pay stubs, or affidavits from religious institutions, non-profits, or other community-based organizations, verifying that he or she is currently receiving some benefit or support from that entity and attesting to his or her financial situation.

2. Special Situations

Sometimes natural disasters and other extreme situations can occur that are beyond an applicant's control and may affect a person's ability to pay the fees. USCIS may designate certain time periods or events in which a person may file a fee waiver request for certain petitions and applications based on an inability to pay through the financial hardship eligibility criteria.[41] The applicant must still establish an inability to pay and file the request for the fee waiver.

E. Adjudication

Each fee waiver request is unique and is considered on its own merits. USCIS may grant a fee waiver request when USCIS determines that the applicant is unable to pay the fee based on established eligibility under one of the two criteria. USCIS adjudicates the fee waiver request based upon the request itself and any additional documentation submitted in support of the fee waiver request at the time of filing and does not issue any Requests for Evidence (RFE).

When adjudicating a fee waiver request, an officer reviews the application and:

- Validates the household size;
- Identifies all valid sources of income applicable to the household;
- Reviews the total annual income of the household;
- Determines the level at which the applicant may qualify based on the household size;[42] and
- Verifies that the applicant submitted the proper documentation and established eligibility.

1. Approval

USCIS may approve the fee waiver request only if the applicant establishes that the household income is at or below 150 percent of the FPG at the time of filing or has established financial hardship.

2. Rejection

If USCIS determines that the applicant did not substantiate an inability to pay based on at least one of the two criteria, then USCIS rejects the fee waiver request. The rejection notice must provide the requestor detailed reasons for the rejection. The table below provides a list of reasons for rejection and considerations involved.

Fee Waiver Rejection Criteria

Rejection Criteria	Consideration
Lack of proper filing	• Applicant did not submit a Request for Fee Waiver (Form I-912)
Income is above 150 percent of the FPG and applicant has not provided sufficient evidence of financial hardship	• Income listed on the form or in the documentation is above the 150 percent FPG threshold • Applicant has not met the burden of proving financial hardship due to the lack of documentation

Rejection Criteria	Consideration
Unable to determine household income	• Identification of household members[43] on the form and no statements or documentation of the household member's income • Identification of a spouse[44] on the form, but no statements of income or additional support or documentation of such income or additional support • If the requestor's filing status in the tax return (for example, married filing jointly, single, head of household) is inconsistent with the marital status declared on the fee waiver request, the immigration benefit forms, or support documents, and the requestor does not provide an explanation or evidence regarding the inconsistency • If the requestor has indicated on the tax form that he or she may be claimed by another person, but the income information for the tax filer is not provided
Lack of income documentation[45]	• Lack of documentation of income and additional income or financial support for the applicant and each household member identified in the fee waiver request or of the person providing additional income, as appropriate • Lack of tax return transcripts or W-2s • Providing pay stubs without a statement from the IRS indicating that no transcripts or W-2s are available • Providing a statement from a religious institution, non-profit, or other community-based organization indicating the person does not have income and the entity is providing services, but does not provide a statement from the IRS indicating that no tax transcripts or W-2s are available
Unable to determine financial hardship	• Insufficient information of the applicant's reason for requesting a financial hardship waiver for the fees • Lack of documentation of household income • Lack of documentation of assets and liabilities

There is no appeal of a rejection of a fee waiver request. An applicant may refile the benefit request with the proper fees for USCIS to process the request. The applicant may also file another fee waiver request with the required documentation to establish eligibility based on one of the two criteria.

Footnotes

1. [^] See 8 CFR 103.7(c).

2. [^] See 8 CFR 103.7(c).

3. [^] Also known as the Application for Advance Permission to Return to Unrelinquished Domicile.

4. [^] See INA 244(a)(3).

5. [^] See Section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), Title II of Pub. L. 105-100 (PDF), 111 Stat. 2160, 2196 (November 19, 1997).

6. [^] See INA 336.

7. [^] See INA 212(a)(4).

8. [^] See INA 212(a)(4).

9. [^] See INA 212(a)(4).

10. [^] See INA 212(a)(4).

11. [^] See INA 212(a)(4).

12. [^] See INA 209(b). Refugees seeking adjustment under INA 209(a) are automatically exempt from paying the Form I-485 filing fee and biometric services fee, and are not required to demonstrate an inability to pay.

13. [^] See Pub. L. 89-732 (PDF) (November 2, 1966).

14. [^] See Title IX of Pub. L. 105-277 (PDF) (October 21, 1998).

15. [^] See Title II of Pub. L. 105-100 (PDF) (November 19, 1997).

16. [^] For example, Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212), Application to Register Permanent Residence or Adjust Status (Form I-485), Application To Extend/Change Nonimmigrant Status (Form I-539), and Application for Waiver of Grounds of Inadmissibility (Form I-601).

17. [^] See Section 201(d)(3) of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA 2008), Pub. L. 110-457 (PDF), 122 Stat. 5044, 5054 (December 23, 2008) (adding INA 245(l)(7)).

18. [^] See Section 201(d)(3) of TVPRA 2008, Pub. L. 110-457 (PDF), 122 Stat. 5044, 5054 (December 23, 2008) (adding INA 245(l)(7)).

19. [^] See Section 201(d)(3) of TVPRA 2008, Pub. L. 110-457 (PDF), 122 Stat. 5044, 5054 (December 23, 2008) (adding INA 245(l)(7)).

20. [^] See Section 201(d)(3) of TVPRA 2008, Pub. L. 110-457 (PDF), 122 Stat. 5044, 5054 (December 23, 2008) (adding INA 245(l)(7)).

21. [^] Certain USCIS forms are not listed in 8 CFR 103.7(b) and therefore have no fee.

22. [^] For example, Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212), Application to Register Permanent Residence or Adjust Status (Form I-485), Application To Extend/Change Nonimmigrant Status (Form I-539), and Application for Waiver of Grounds of Inadmissibility (Form I-601).

23. [^] VAWA self-petitioner as defined under INA 101(a)(51) includes abused spouses and children of U.S. citizens and lawful permanent residents; abused parents of U.S. citizens; abused spouses and children filing a waiver of the joint filing requirement under INA 216(c)(4)(C); abused children or spouses under CAA; and abused family members under HRIFA and NACARA.

24. [^] See INA 101(a)(51). See INA 245(l)(7). See TVPRA 2008, Pub. L. 110–457 (PDF), 122 Stat. 5044 (December 23, 2008); 22 U.S.C. 7101 et seq. For requestors in this category, there is no fee for filing a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) and no fee for filing an Application for Employment Authorization (Form I-765). Form I-360 allows a principal self-petitioner to request an employment authorization document (EAD) incident to case approval without submitting a separate Form I-765. Form I-765 is required for employment authorization requests by derivative beneficiaries and employment authorization requests on a different basis. There is no fee for VAWA self-petitioners using Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360). For battered spouses of A, G, E-3, or H nonimmigrants under INA 106, there is no fee for filing an Application for Employment Authorization for Abused Nonimmigrant Spouse (Form I-765V).

25. [^] Currently, fees for Form I-131 are exempt if filed in conjunction with a pending or concurrently filed Form I-485 with fee that was filed on or after July 30, 2007. See 8 CFR 103.7(b)(1)(i)(M)(4).

26. [^] See INA 101(a)(15)(T) (T nonimmigrant status for victims of severe form of trafficking). For this category, there is no fee for filing Application for T Nonimmigrant Status (Form I-914) or for filing Application for Employment Authorization (Form I-765). Form I-914 allows a principal applicant to request an EAD incident to case approval without submitting a separate Form I-765. Form I-765 is required for employment authorization requests by derivative relatives.

27. [^] There is no fee for filing the following forms: Application for T Nonimmigrant Status (Form I-914), Application for Family Member of T-1 Recipient (Form I-914, Supplement A), and Declaration of Law Enforcement Officer for Victims of Trafficking in Persons (Form I-914, Supplement B).

28. [^] See INA 101(a)(15)(U) (U nonimmigrant status for victims of criminal activity). For this category, there is no fee for filing Petition for U Nonimmigrant Status (Form I-918), Petition for Qualifying Family Member of U-1 Recipient (Form I-918, Supplement A), or Application for Employment Authorization (Form I-765). Form I-918 allows a principal petitioner to request an EAD incident to case approval without submitting a separate Form I-765. Form I-765 is required for employment authorization requests for principal petitioners who seek an EAD after waiting list placement, as well as by qualifying family members.

29. [^] See INA 240A(b)(2). See INA 245(l)(7).

30. [^] See INA 244. See INA 245(l)(7).

31. [^] Including Consideration of Deferred Action for Childhood Arrivals (Form I-821D).

32. [^] See 8 CFR 1103.7.

33. [^] See 8 CFR 103.7(c).

34. [^] See HHS Poverty Guidelines for Fee Waiver Request (Form I-912P).

35. ^] If the requestor submits any joint-filed federal tax returns, USCIS reviews the household size to determine household members or spouses.

36. [^] However, any additional income or financial support provided by the spouses must be included in the request. See Subsection 3, Additional Financial Assistance [1 USCIS-PM B.4(C)(3)].

37. [^] USCIS reviews the Internal Revenue Service (IRS) federal income tax return transcripts to examine whether any dependents are listed.

38. [^] For information on obtaining federal income tax transcripts without a fee, see irs.gov/individuals/get-transcript.

39. [^] An SIJ may request a fee waiver for an adjustment of status application, and associated Forms I-601, Form I-765, or Form I-290B for Form I-360, or other associated forms.

40. [^] Foster care (also known as out-of-home care) is a temporary service provided by States for children who cannot live with their families. Children in foster care may live with relatives or with unrelated foster parents. Foster care can also refer to placement settings such as group homes, residential care facilities, emergency shelters, and supervised independent living. See 45 CFR 1355.20. See childwelfare.gov/topics/outofhome/foster-care.

41. [^] See Special Situations web page. For example, USCIS allowed for consideration of fee waivers for those affected by South Carolina floods in 2015.

42. [^] Review the HHS Poverty Guidelines for Fee Waiver Request (Form I-912P).

43. [^] Applicants for any immigration benefits based on VAWA or T or U nonimmigrant status do not need to provide the income of any household member who is or was their abuser or human trafficker. Fee waiver requests that detail these grounds of victimization should not be rejected if the applicant has described that a member of his or her household is or was his or her abuser or trafficker in sufficient detail. For more information, see Section C, Income At or Below 150 Percent of Federal Poverty Guidelines, Subsection 2, Documentation [1 USCIS-PM B.4(C)(2)].

44. [^] Applicants for any immigration benefits (such as for adjustment of status) based on VAWA or T or U nonimmigrant status do not need to provide their spouse's income.

45. [^] Generally, applicants for any immigration benefits (such as for adjustment of status) based on VAWA or T or U nonimmigrant status are not rejected for a lack of documentation if the applicant has described his or her inability to provide the required documentation in sufficient detail and provided any other available documentation.

Part C - Biometrics Collection and Security Checks

Part D - Attorneys and Representatives

Part E - Adjudications

Part F - Motions and Appeals

Part G - Notice to Appear

Volume 2 - Nonimmigrants

Part A - Nonimmigrant Policies and Procedures

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Part F - Students (F, M)

Part G - Treaty Traders and Treaty Investors (E-1, E-2)

Part H - Specialty Occupation Workers (H-1B, E-3)

EXHIBIT F

USCIS Responses to Public Comments Received on the 60-day Federal Register Notice, "Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions," 83 FR 49120 (Sept. 28, 2018).

1. Comment: Commenters provided their individual circumstances as examples of who needs a fee waiver.

Response: USCIS understands that this change will require people to obtain different documentation than they previously would have to establish eligibility for a fee waiver. However, applicants may still request fee waivers. USCIS does not believe the changes are an excessive burden on respondents.

2. Comment: This notice of a form change is a regulation.

Response: The current regulations at 8 CFR 103.7(c) provide that USCIS may, *in its discretion*, waive fees for a person who demonstrates an "inability to pay" the fee of an eligible form. However, USCIS has identified what it would consider as criteria for demonstrating "inability to pay" in the form and a USCIS policy memorandum. The form and its instructions are being revised to change the fee waiver policy through the USCIS Policy Manual. To simplify fee waiver requests, and improve quality and consistency of fee waiver adjudications, USCIS is updating the criteria it uses to establish inability to pay. DHS is not changing the applicable regulations.

3. Comment: USCIS did not properly follow the Administrative Procedure Act requirements. Specifically, the form edits did not provide the opportunity to meaningfully participate because it lacks sufficient evidence, and lacks the rationale and data precludes meaningful public participation.

Response: DHS is aware that if an agency adopts a new position inconsistent with an existing regulation, or effects a substantive change in the regulation, notice and comment are required under the Administrative Procedure Act (APA). 5 U.S.C.A. § 553(b)(3)(A). However, the form and instructions for USCIS Form I-912 only provide the USCIS interpretation of the inability to pay as provided in 8 CFR 103.7(c) and the procedures for requesting a fee waiver. Therefore, Form I-912 and its instructions are an interpretive rule and procedural rule.

An agency may issue a new interpretation of a regulation that deviates significantly from the agency's previous interpretation without following the APA's rulemaking provisions. *See Perez v. Mortgage Bankers Ass'n*, 135 S.Ct. 1199 (2015). In addition, the APA procedural-rules exception provides that agency may change the procedures for applying standards without engaging in notice and comment rulemaking. *See James v. Hurson Associates, Inc. v. Glickman*, 229 F.3d 277 (D.C. Cir. 2000). That a rule adds burden to the affected regulated public does not mean it is not a procedural rule. *Id*. Thus USCIS is not required to use the APA's notice-

and-comment procedures to amend or repeal an interpretive or procedural rule, such as its fee waiver policy and Form I-912.

In *Perez* the Supreme Court also held that, although an agency can change its interpretation of a regulation at different times in its history, the interpretative changes can create no unfair surprise. *See Perez*, 135 S.Ct. at 1208, fn. 2; *see also Long Island Care at Home Ltd. v. Coke*, 551 U.S. 158, 171 (2007) (holding that *Seminole Rock* and *Auer* deference is inapplicable when there is a strong potential for unfair surprise); *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142 (2012). Accordingly, USCIS acknowledges that individuals who may have planned to file a request or a waiver may argue that changing a multi-year practice of accepting a means tested benefit as proof of inability to pay is a binding regulation. However, fee waivers are an exercise by DHS of the discretionary authority provided in INA section 286(m), 8 U.S.C.1356(m) to provide certain services for free, and the regulations codified under that authority at 8 CFR 103.7(c) provide that fee waivers are at the discretion of USCIS. Commenters on this form change also have not identified any action that they may have taken to their detriment in reliance on USCIS continuing its current policy. To the contrary, if an individual chooses to apply for and is granted a means tested benefit, it will be because they need the benefit and not because they wanted to use proof of such a benefit to obtain a USCIS fee waiver request. Stated more directly, an applicant for a USCIS immigration benefit would not seek to temporarily obtain means tested benefits simply so they could use the award letter to attach to their Form I-912 requesting that their USCIS fee be waived. Thus removing that requirement should not be detrimental because fee waivers remain available with proof of household income. In addition, while USCIS is abrogating the means tested benefit prong for fee waiver eligibility, we have maintained the ability to request a fee waiver using income tax returns or other proof of income that an individual should have available. Therefore, USCIS can identify no significant reliance interest that would have inured to anyone who would be requesting a fee waiver before this change that will be harmed by the change as a result of such a reliance interest. Plus, as discussed further below, USCIS is providing significant advance notice of the change to permit any person who may be affected by the change with sufficient time to conform to the new policy and practice.

Furthermore, USCIS is providing the opportunity for meaningful comment because DHS/USCIS has published the proposed form changes to change its fee waiver policy as required by the Paperwork Reduction Act (PRA). As was stated in the Federal Register Notice requesting public comments, our rational basis for the change is that the use of means tested benefits to demonstrate inability to pay resulted in inconsistent application of the policy. When USCIS revises a form, PRA regulations require two Federal Register Notices and two rounds of public comment. 5 CFR 1320.8(d)(1) requires an agency to provide a 60-day notice in the Federal Register before it submits a collection of information to OMB for approval. Following that notice and addressing the subject comments, on or before the date of submission to OMB, 5 CFR 1320.10(a) requires the agency to provide notice in the

Federal Register stating that OMB approval is being sought and that comments can be submitted to OMB within 30 days of the notice's publication.

Likewise, the USCIS form revision process involves experts from all directorates and it incorporates functional, policy, fiscal, legal, and operational considerations from counsel, intake, management, and operations. The revised forms are routed for concurrence throughout DHS, and other stakeholders for final approval before being posted for public comment. While PRA notices do not rise to the level of notice and comment rulemaking, they do provide public notice, and demonstrate that commenters' concerns have been considered. The information collection request as a whole provides USCIS rational basis and is based on our expertise in fees and fee waiver issues, and our experience in implementing the regulations. In the case of a policy interpretation of its own regulations, the use of form instructions is an appropriate method for USCIS to use. *See U.S. v. Mead Corp.*, 533 U.S. 218 (2001).

4. Comment: General opposition to the removal of the means-tested benefit criteria.

Response: As stated in the Federal Register Notice, USCIS 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. 83 FR 49120 (Sept. 28, 2018). USCIS is primarily funded by application and petition fees and authorized to establish fees at a level that will recover the full cost of USCIS adjudication and naturalization services including from those applications and petitions where a fee is not collected. See INA section 286(m), 8 U.S.C. 1356(m). Currently, the cost associated with applications and petitions that have been fee waived is shifted to other applications and petitions. Therefore, other applicants must cover the cost of fee- waived applications and petitions. In FY 2017, USCIS approved 588,732 or 86% of these fee waiver requests. To increase the consistency in the shifting of the cost of fee waivers to those who pay fees, USCIS has decided to apply more consistent standards of income and financial hardship for the purposes of determining inability to pay a fee.

5. Comment: USCIS would have to re-adjudicate income that a public-benefit granting agency had already determined.

Response: To make the eligibility requirement consistent, USCIS is removing the means-tested benefit receipt as a criteria for filing a fee waiver request. USCIS' determination of the inability to pay the fee for a request is distinct from that of other public benefit granting agencies, which may include a person's income. In addition, many applicants have requested a fee waiver based on the receipt of public benefits that are not means tested. This requires USCIS to reviews the public benefit requirements to determine whether it is a means-tested benefit and would be acceptable under the USCIS criteria. Means-tested benefits have a wide variety of eligibility requirements and income thresholds between states which includes incomes above the 150% of the Federal Poverty Guidelines which USCIS uses for

other fee waiver eligibility. Removing means-tested benefits as making an applicant eligible for a fee waiver will reduce the burden on USCIS and permit us to devote some resources to benefit adjudication now being used for fee waivers. Applicants may still request a fee waiver using the income or financial hardship criteria.

6. Comment: This change is a "waste of taxpayer to dollars" by requiring that USCIS reassess the income of the applicants.

Response: USCIS is funded through fees and taxpayer dollars are not used in the adjudication of fee waivers. Currently, the cost associated with applications and petitions that have been fee waived is shifted to other applications and petitions. Therefore, other applicants must cover the cost of fee-waived applications and petitions. Furthermore, and contrary to the commenters' suggestion, USCIS believes that the proposed change will reduce its administrative burden for fee waiver processing.

7. Comment: The proposed form changes would increase the burden on alien, nonprofit community organizations assisting the aliens and other agencies.

Response: USCIS acknowledges that providing copies of income tax returns or other acceptable proof of income may place more burden on the alien than providing a copy of a current award letter from a means tested benefit agency. However, an applicant who receives a means-tested benefit must generally provide evidence of income to the relevant agency. Therefore, applicants who receive a means tested benefit should have income documentation readily available to provide to USCIS. Thus, the additional burden should be minimal. In any event, DHS has considered the burden on applicants and determined that the benefits of the policy change exceed the potential small burden increase.

8. Comment: Removal of the means-tested benefit criteria would affect those who do not need to file tax returns and therefore do not have information on income. The change will affect elderly, refugees and asylees especially.

Response: Although the means-tested benefit criteria is being removed, the applicants would still be eligible for file under the criteria of having income at or below 150 percent of the Federal Poverty Guidelines, or having suffered a financial hardship. In addition, to apply for means-tested benefits, an applicant must provide proof of income to the public benefit granting agency. For purposes of a USCIS fee waiver, the requester would be merely providing that same documentation to USCIS. For other applicants who do not need to file a federal income tax return, a W-2 may be available through the U.S. Internal Revenue Service (IRS) or a statement from the IRS that indicates neither a tax return nor a W-2 is available. This statement in addition to the applicant's most recent paystubs, if available, should be sufficient evidence for income.

9. Comment: The policy changes will cause some aliens to not apply for naturalization or other benefits.

Response: The changes to Form I-912 do not prevent applicants from filing applications or petitions. Applicants who cannot afford, or claim they cannot afford, the fee could still apply for a fee waiver and may still qualify. In addition, there is no time limit for applying for naturalization. An alien may extend their permanent resident card and save funds to pay the fee for an application for naturalization at a later date without affecting their eligibility for the benefit.

10. Comment: The changes would restrict access to fee waivers.

Response: USCIS will continue to grant fee waivers, and shift the costs of fee-waived applications, petitions, and requests to other benefit-seeking applicants and petitioners. USCIS agrees that applicants with a household income greater than 150 percent of the federal Poverty guidelines who may have nonetheless been approved for a means tested benefit in their home state will no longer be eligible for a fee waiver under this changed policy, unless they suffer a financial hardship. Regardless of this impact, USCIS has decided to standardize eligibility for fee waivers and that applicants who pay fees should not pay higher fees so that families with incomes considerably above the poverty level can receive free immigration benefits. Applicants who cannot afford, or claim they cannot afford, a fee could still apply for a fee waiver and may still qualify.

11. Comment: The changes punish poor families or discriminate against low income families.

Response: USCIS disagrees. USCIS is updating fee waiver criteria to provide a more standardized and consistent review of fee waivers. All applicants may still request a fee waiver. In addition, USCIS notes that prior to the current policy, USCIS did not have a standard for fee waivers and applicants still filed requests for immigration benefits and paid fees without the benefit of fee waivers based on receiving a means tested benefit. In addition, Congress has provided that USCIS operations will be funded by fees paid by those filing requests for adjudication and naturalization services. Providing the criteria in policy guidance for how an applicant may provide evidence of eligibility to have such fees waived is neither punishing nor discriminatory.

12. Comment: Immigrants provide benefits to the U.S. and should be given an opportunity to obtain immigration benefits.

Response: USCIS did not propose to change any requirement for obtaining immigration benefits. Applicants are still eligible to apply for any benefit, including for a fee waiver.

13. Comment: The use of the IRS affidavit of non-filing form would not be useful to determine whether an alien had income.

Response: USCIS agrees and has updated the form instructions to provide that the fee waiver request should include a request for IRS transcripts and IRS Forms W-2. If the IRS statement is returned with no available tax returns or W-2 and the applicant affirms that he or she does not have income, USCIS will accept the documentation to establish that the alien has no income and therefore eligible for the fee waiver.

14. Comment: Tax transcripts should not be used.

Response: USCIS currently requests copies of income tax returns from applicants requesting fee waivers. Tax transcripts are easily requested through the Internal Revenue Service (IRS) website or though paper filing and are free to taxpayers. USCIS cannot accept incomplete copies of tax returns or copies that are not signed or submitted to the IRS to support fee waiver requests. Therefore, USCIS believes that requiring transcripts will reduce the number of fee waiver request rejections. In terms of the Non-filing letter from the IRS, USCIS is concerned about not receiving documentation of no-income. Therefore, obtaining information from the IRS in transcripts, a W-2, or proof of non-filing, if applicable, is sufficient documentation to establish the necessary income or no income.

15. Comment:
(a) The changes would impact the USCIS adjudication and create potential backlogs.
(b) Requiring each person to submit a form individually would be burdensome and unnecessary.

Response: USCIS believes that the changes will not increase the burden on it to review fee waiver requests. As for requiring a separate form for each family member, the burden may increase for households with several members. However, USCIS data indicate that over 90 percent of Form I-912 filings were filed for one person and less than 10 percent were for multiple members of the same household on one form. Thus, the impact is estimated to be minimal. USCIS believes the change will reduce the number of fee waiver requests that are rejected because of improper documentation, inadequate information and no signatures for household members. We think these benefits exceed the small increase in burden that this change may add.

16. Comment: The change would be an "infringement on state rights."

Response: The commenter did not indicate the factual or legal basis of their comment. USCIS fee waiver eligibility only impacts the waiver of USCIS fees and does affect a state's determination for eligibility of public benefits or income determinations for the public benefits.

17. Comment: USCIS should use a sliding scale for its fees instead of the change in criteria.

Response: Changing the USCIS fee schedule, including indexing the fees based on income level, requires notice and comment rulemaking. Thus, the commenters' suggestion exceeds what USCIS can do in form instructions or other policy guidance.

18. Comment: The changes would increase the burden on, have a disproportionate impact, and impose additional barriers to victims such as VAWA, T, U, and SIJ applicants and petitioners, and the impact is contrary to the congressional intent that the victims have access to these immigration benefits.

Response: USCIS believes that the impacts on the identified groups will actually be less pronounced than they will be on any other group and not more. The policy for VAWA, SIJ, T, and U applicants and petitioners will be retained with this form change, aside from the Form I-912 now being required. As stated below in response to another comment, USCIS has revised the form that was posted for public comment to clarify the evidence requirements for this population of respondents. Specifically, SIJ applicants will not be required to provide documentation of income and do not need to provide the income of a foster home or household members. VAWA self-petitioners, and applicants and petitioners for T and U nonimmigrant status, will not need to provide documentation of income from family members who are or where their abuser or human trafficker and may still use the "safe address" listed on the underlying form. Finally, if no evidence of income is available due to victimization, VAWA, T and U applicants and petitioners may provide affidavits or statements from religious organizations or advocacy groups with their Form I-912 to document income or lack thereof. 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.

19. Comment: The suggested form revisions would disproportionately impact self-petitioners for relief under the Violence Against Women Act (VAWA), petitioners for U nonimmigrant status, and applicants for T nonimmigrant status. Specifically,
   (a) The elimination of the means-tested benefit as a basis for fee waiver eligibility as well as the requirement to provide IRS documentation if the individual does not have other proof of income could prohibit victims from being considered for these benefits.
   (b) The stricter evidentiary requirements are contrary to Congress' intent in creating the "any credible evidence standard" for these programs and suggested that the agency, instead, retain its policy laid out in PM-602-0011.1, which allows greater flexibility to submit various types of evidence. The VAWA, T, and U population may find it difficult to obtain and submit the required documentation due to their victimization.

Response: While the "any credible evidence standard" does not apply to Form I-912, USCIS understands that the VAWA, T, and U population may have difficulty

in obtaining the required documentation due to their alleged victimization and that those filers may need USCIS to apply more flexible standards in the types of documentation that they may submit with their fee waiver request. Therefore, USCIS has revised the form and instructions to provide that fee waiver requests from a person with a pending or approved petition or application for VAWA benefits or T or U nonimmigrant status will not be required to include any household member, including the requester's spouse, who is or was their abuser or human trafficker in the "Your Household Size" and "Your annual Household Income" sections under Part 3. Likewise, any VAWA, T, or U applicants or petitioners who are listed as dependents on their tax return will not be required to include a spouse, parent, or adult child's income under Part 3 if that relative is or was their abuser or trafficker. Second, when applying for a fee waiver based on either household income or financial hardship, VAWA, T, and U applicants and petitioners generally must provide the required documentation of their income. Individuals who do not have any income and are unable to provide proof of income due to their alleged victimization may provide a detailed description of their situation in the form or in attachments to substantiate their inability to pay as well as their inability to obtain the required documentation. Additionally, they must submit any available documentation of their income, such as pay stubs or affidavits from religious institutions, non-profits, or other community-based organizations verifying that they are currently receiving some benefit or support from that entity and attesting to their financial situation.

20. Comment: The form should include a reference to the confidentiality protections under 8 U.S.C. 1367 to provide reassurance to applicants or petitioners for U nonimmigrant status, T nonimmigrant status, or relief under the Violence Against Women Act (VAWA) that any information submitted through the fee waiver request is protected from unauthorized disclosure pursuant to the statute.

Response: USCIS is committed to protecting the safety of victims of domestic violence, trafficking, and other crimes by adhering to our obligations under 8 U.S.C. 1367. These protections apply to all information pertaining to individuals with a pending or approved VAWA, T, or U petition or application, which includes information provided on any USCIS form. USCIS employees receive training and guidance regarding these protections, and the agency's obligations will be made clear in the USCIS Policy Manual. It is unnecessary to reference the requirements and statute specifically on the form or instructions. Therefore, USCIS will not include specific reference to the confidentiality protections in every form.

EXHIBIT G

	A	B	C	D
1	General Responses to Public Comments			
2	Federal Register Notice, "Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions." 84 FR 13687 (April 5, 2019).			
3	30-Day Public Comment Period (4/5/19-5/6/19)			
4	Category	Comments Single/ Multiple	Comments	30 Day Responses
5	Alien burden	Attributed to Many	Commenters responded that by eliminating receipt of a means-tested benefit to show eligibility, the government is adding an additional burden on immigrants who already are facing the economic challenge of paying for application fees. The proposed changes will place an additional burder on individuals to complete the fee waiver form and obtain more supporting documentation.	USCIS understands that this change will require people to obtain different documentation than they previously would have to establish eligibility for a fee waiver. USCIS agrees that the burden will increase. but still does not believe that the burden that will be imposed by the revised form will be excessive for a requestor to receive the free adjudication of his or her's immigration benefit request. USCIS is 96% funded by fees and we must charge fees to cover our costs. Upon review of the comments, USCIS analyzed the current estimated time burden per response data and has made a modification. The new estimated time burden per response is 2 hours and 20 minutes. The additional burden for obtaining tax transcripts was considered in our decision to move forward with this change.
6	CBO and Legal Service Burden	Attributed to Many	Fee waiver preparation for low-income immigrants demands hours of work from legal services providers. The fee waiver based on receipt of a means-tested benefit is efficient in that the provider knows which document will be sufficiently probative for USCIS. The other grounds for a fee waiver, financial hardship and a threshold of the poverty income guidelines, are much less clear, and require far more time to gather sufficient documentation.	USCIS understands that the proposed changes will require people to obtain different documentation than they previously would have to establish eligibility for a fee waiver. Therefore, USCIS is providing significant advance notice of the change to permit any person or entity who may be affected by the change with sufficient time to conform to the new policy and practice. This should provide nonprofit community organizations and legal service providers an appropriate amount of time to revise any training or resource material for staff or applicants, as well as methods for advising applicants of the requirements for fee waiver eligibility. Although the means-tested benefits criteria is being abrogated from the current three options to establish fee waiver eligibility, applicants would still be eligible to file for fee waivers under the current criteria of having income at or below 150 percent of the Federal Poverty Guidelines, or having suffered a financial hardship. Thus, staff and volunteers at nonprofit community organizations should already be familiar with the remaining criteria for fee waiver eligibility. DHS has considered the burden on applicants and those that provide them aid and determined that the benefits of the policy change exceed the potential small burden increase.
7	CBO and Legal Service Burden	Attributed to Many	With the proposed changes to the fee waiver form, it will become harder or even impossible for non-profit legal service providers to complete applications in the workshop setting. Organizations may stop providing assistance with fee waivers in the workshop setting. This would cut off access to legal support and immigration relief for vulnerable populations, particularly for those in remote or other hard-to-reach areas.	USCIS appreciates that some non-profit agencies provide assistance for aliens filling out fee waiver requests and does not believe that such services would be extraordinarily impacted by the changes to the I-912. However, immigration laws, policy and forms are ever changing and both applicants and organizations have previously adapted to the changes. Further, the changes within this form would not result in every applicant being denied a fee waiver as the person could still apply under the other two criteria: income under 150% of the FPG or financial hardship.
8	CBO and Legal Service Burden	Single	Because nearly all of our clients are in poverty, we rely heavily on fee waivers from the agency to begin applications for immigration relief. Severely restricting fee waiver eligibility does not change the underlying reality that virtually none of our clients have the ability to pay the filing fees, and Sanctuary would generally need to cover our clients' fees in order to seek relief on their behalf. That would significantly diminish the number of clients whom we could serve.	USCIS disagrees that this change severely limits fee waiver eligibility. USCIS provided the option of providing a fee waiver to an applicant who received a means tested benefit as a short cut method of documenting low income but it was never intended to loosen the agency's interpretation of unable to pay under its fee waiver regulations at 8 CFR 103.7(c); however, as the commenter implies, that method of demonstrating eligibility for a waiver may have made fee waivers excessively obtainable, resulting in huge costs to USCIS. USCIS is not intending to severely restrict fee waivers for those who are unable to pay and we think the clients of the commenter, if they are truly destitute as described, should be able to have their fees waived using the revised form.
9	Eliminating means-tested benefits	Attributed to Many	Receipt of a means-tested benefit is sufficient evidence of inability to pay, which is what 8 C.F.R. § 103.7(c) requires.	As stated in the Federal Register Notice, USCIS 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. 83 FR 49120 (Sept. 28, 2018). To increase the consistency in the shifting of the cost of fee waivers to those who pay fees, USCIS has decided to apply more consistent standards of income and financial hardship for the purposes of determining inability to pay a fee.
10	Eliminating means-tested benefits	Attributed to Many	USCIS is taking the indefensible position that it cannot tell which public benefit programs are means-tested and which ones are not. Given that the largest means-tested programs are federal program such as Medicaid or SNAP, this assertion is plainly a pretense for an action that has no real basis in fact.	The fact is that USCIS fee waiver volumes, most approved using the means tested benefit criterion, have continued to increase substantially. Thus, regardless of if a benefit is Federally funded or implemented by states, the use of means tested benefits as equal to the inability to pay a USCIS fee has resulted in continued growth of fee waivers - growth at much higher rates than the numbers of people receiving such benefits. This inconsistent trend indicates that there is a problem with using such benefits as a short cut for providing waivers. Thus USCIS will require that requests for a fee waiver provide proof of income.
11	Eliminating means-tested benefits	Attributed to Many	Contrary to what Congress intended, the proposed revisions to eliminate an individual's ability to use proof of receipt of means-tested public benefits to demonstrate inability to pay the prescribed fee will exacerbate the barriers that immigrant survivors already face when coming forward to access protection.	Although USCIS is removing the criteria based on the means-tested benefit, fee waivers are still available to low income applicants.
12	Eliminating means-tested benefits	Attributed to Many	USCIS indicates that an "applicant who receives a means-tested benefit must generally provide evidence of income to the relevant agency. Therefore, applicants who receive a means tested benefit should have income documentation readily available to provide to USCIS." USCIS posits this to conclude that the additional burden for individuals to provide copies of income tax documentation instead of an award letter from a means tested benefit agency in order to qualify for fee waivers will cause minimal additional burden. However, individuals may have provided acceptable forms of proof other than income tax documentation when applying for and receiving means-tested benefits, such as a letter from an employer showing income and number of hours worked.	To make the eligibility requirement consistent, USCIS is removing the means-tested benefit receipt as a criteria for filing a fee waiver request. USCIS' determination of the inability to pay the fee for a request is distinct from that of other public benefit granting agencies, which may include a person's income. In addition, many applicants have requested a fee waiver based on the receipt of public benefits that are not means tested. This requires USCIS to review the public benefit requirements to determine whether it is a means-tested benefit and would be acceptable under the USCIS criteria. Means-tested benefits have a wide variety of eligibility requirements and income thresholds between states which includes incomes above the 150% of the Federal Poverty Guidelines which USCIS uses for other fee waiver eligibility. Removing means-tested benefits as making an applicant eligible for a fee waiver will reduce the burden on USCIS and permit us to devote some resources to benefit adjudication now being used for fee waivers. Applicants may still request a fee waiver using the income or financial hardship criteria.

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1	General Responses to Public Comments			
2	Federal Register Notice, "Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions." 84 FR 13687 (April 5, 2019).			
3	30-Day Public Comment Period (4/5/19-5/6/19)			
4	Category	Comments Single/ Multiple	Comments	30 Day Responses
13	Eliminating means-tested benefits	Attributed to Many	Contrary to USCIS' assertions, 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. as receipt of a means-tested benefit is an accurate, valid and reliable method to demonstrate financial hardship.	USCIS will continue to grant fee waivers, and shift the costs of fee-waived applications, petitions, and requests to other benefit-seeking applicants and petitioners. USCIS agrees that applicants with a household income greater than 150 percent of the federal Poverty guidelines who may have nonetheless been approved for a means tested benefit in their home state, will no longer be eligible for a fee waiver under this changed policy, unless they suffer a financial hardship. Regardless of this impact, USCIS has decided to standardize eligibility for fee waivers and that applicants who pay fees should not pay higher fees so that families who have received means tested benefits, but who have incomes considerably above the poverty level and have not suffered a financial hardship, can receive free immigration benefits. Applicants who cannot afford, or claim they cannot afford, a fee could still apply for a fee waiver and may still qualify.
14	Eliminating means-tested benefits	Attributed to Many	Means-tested benefits proof is by far the most common and straightforward way to demonstrate fee waiver eligibility as applicants have already proven current receipt of benefits by providing a copy of the official eligibility letter, or Notice of Action, from the government agency administering the benefit.	USCIS has found the use of means-tested benefit award letters to be a problem, and we have decided to change our policy.
15	Eliminating means-tested benefits	Attributed to Many	USCIS has failed to demonstrate that the elimination of means-tested benefits has practical utility or is necessary for the proper performance of the agency's functions. In its responses to comments, USCIS has asserted that its goal is to "simplify fee waiver requests, and improve quality and consistency of fee waiver adjudications," yet the elimination of means-tested benefits will achieve the opposite.	USCIS agrees that eliminating the use of an means-tested benefit for approving fee waivers appears to make it more complicated; however, keeping up on what benefits are means tested has been a challenge and inconsistent in its application because different benefts have different thresholds. By basing fee waivers on income, waivers will be granted more consistently.
16	Eliminating means-tested benefits	Single	Eliminating the receipt of means-tested benefits from the fee waiver reinforces the fear that receiving public benefits will hinder immigrants' ability to become lawful permanent residents. The words "means-tested benefit" and "public benefit" have recently been given a negative connotation. This completely devalues the purpose of these benefits and programs, which were designed to pave the way to self-sufficiency.	USCIS does not believe that these changes will hinder a person's ability to become a lawful permanent resident as fee waives would still be available including for people with incomes under 150% of the FPG and financial hardship. Further, these changes do not change whether a person is eligible for public benefits but as specific to the application for immigration benefits and a fee waiver.
17	Eliminating means-tested benefits	Single	The proposed change has also created confusion and fear among immigrants—including refugees and asylees—who are specifically exempted by Congress from the public charge evaluation. These immigrants have been unwilling to participate in public benefits program out of fear that it may hinder their ability to become lawful permanent residents. This perceived fear hurts many families that need assistance to become financially stable and self-sufficient.	USCIS does not believe that these changes will hinder a person's ability to become a lawful permanent resident as fee waives would still be available including for people with incomes under 150% of the FPG and financial hardship. Further, these changes do not change whether a person is eligible for public benefits but as specific to the application for immigration benefits and a fee waiver. USCIS understands that some people may disenroll from public benefits, however, she changes do not change the eligibility requirements for public benefits and do not intent for aliens to disenroll from public benefits. Instead the review is only about the income threshold and if applicable, whether the person has financial hardship.
18	Eliminating means-tested benefits	Single	Immigrants who recently entered the United States and who file an initial form I-765 would not be able to provide evidence of employment, income tax returns, assets, or expenses due to their recent entry. Examples of these individuals include Cuban and Haitian entrants recently paroled into the U.S. filing for employment authorization under category (c)(11). Currently, these individuals are able to enroll in means-tested benefits and immediately obtain proof of their participation. These individuals use a benefits letter, which can be quickly obtained online or at an access center after approval, to immediately file form I-765 along with a fee waiver.	The revised from instructions state that applicants are not required to provide income tax returns if they do or did not file tax returns, and provide instructions or what such applicants must provide.
19	I-912 Mandatory/No Letter Option	Attributed to Many	Applicants must continue to be permitted to submit applicant-generated fee waiver requests (i.e., requests that are not submitted on Form I-912, such as a letter or an affidavit) that comply with 8 C.F.R. § 103.7(c), and address all of the eligibility requirements. Eliminating this currently accepted form of request places an additional and unnecessary burden on applicants to locate, complete, and submit the Form I-912, when a self-generated request that provides all of the necessary information can equally meet the requirements. The proposed requirement directly conflicts with 8 C.F.R. § 103.7(c)(2) and is therefore impermissible.	The commenter is incorrect that the new policy conflicts with 8 CFR 103.7(c)(2) or that USCIS must continue the means tested benefit policy. That regulation provides that USCIS may at its discretion waive its fee for applicants who are unable to pay. It does not require USCIS to accept or require specific evidence of inability to pay.
20	I-912 Mandatory/No Letter Option	Attributed to Many	Eliminating this currently accepted form of request places an additional and unnecessary hardship on survivors to locate, complete, and submit the Form I-912, when a self-generated request that provides all of the necessary information can equally meet the requirements. 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....Moreover, these applicant generated forms of proof comport with the requirements of 8 CFR 103.7(c).	Adjudicating ad hoc fee waiver requests has proven to be difficult due to the varied quality and information provided in ad hoc letter requests. Form I-912 is easy to complete, and it provides standardization that will assist USCIS in our review of requests.
21	IEFA Fee/Fee Calculation	Single	The proposed elimination of an entire basis for waiver must be preceded by studies showing the amount of economic impact on the IEFA and the applicant community for informed decision making. Reduction in waivers require a reduction in IEFA funded fees charged to other applicants. DHS sets fees at a level that will ensure recovery of the full operating costs of USCIS, the entity within DHS that provides almost all immigration adjudication and naturalization services. See Homeland Security Act (HSA), Public Law 107-296, sec. 451, 116 Stat. 2142 (Nov. 26, 2002) (6 U.S.C. 271). The statute authorizes only the recovery of the costs of providing immigration adjudication and naturalization services. The elimination of the public benefit basis reduces the number of fee waiver based applications and increases revenue for DHS. The impact must be analyzed for compliance with existing fee limits. On the other hand, DHS previously stated that adjusting fee levels based on income would raise administrative complexity and would require higher costs to administer. See 75 FR 58971. Similarly, casting public benefit applicants into reporting income figures makes large numbers of applicants spend additional time in filling out applications. The proposed change fails to assess this impact in order to comply with the Paperwork Reduction Act. The proposal also generates revenues without adjusting the fees charged to applicants to be revenue neutral as required by the code.	USCIS considers projections of fee-waived and fee exempt workloads as part of its biennial fee review to determine the fees necessary to recover the full cost of its immigration adjudication and naturalization services, including similar services provided without charge to asylum applicants or other immigrants. USCIS conducts its biennial fee review in accordance with the Chief Financial Officers Act of 1990, the Immigration and Nationality Act, and non-statutory guidance to study the agency's revenue, costs, and needs. As a result of the biennial fee review, USCIS may propose to decrease fees if revenue is anticipated to exceed costs or to increase fees if costs are anticipated to exceed revenues. Currently, USCIS anticipates that the agency's costs will continue to exceed the revenues collected via its fee schedule and therefore declines to reduce fees. As always, USCIS will publicly communicate information on future fee reviews through a notice of proposed rulemaking (NPRM) published in the Federal Register, should a decision be made to adjust its fees.

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22	IEFA Fee/Fee Calculation	Single	The proposed reduction in waivers requires assessment of impact on access to the naturalization process by applicants affecting the mission of USCIS... DHS may reasonably adjust fees based on value judgments and public policy reasons where a rational basis for the methodology is propounded in the rule making. See FCC v. Fox Television Stations, Inc., 556 U.S. 502, 515 (2009); Motor Vehicle Mfrs. Ass'n v. State Farm 2 Must. Auto. Ins. Co., 463 U.S. 29 (1983). However, there can be no determination of public policy without analysis of the impact on applicants for naturalization... The proposed change does not analyze the apparent contradiction of the elimination of a whole basis for fee waivers to DHS policies. Compare Id. (Where DHS determined that the change proposed, because it applies only to Form N-400 and the act of acquiring citizenship, is of sufficient value from a public policy standpoint to justify USCIS incurring the additional administrative and adjudicative burden.)	USCIS is not required by any law to perform a costs benefit analysis on the impacts of this change on potential applicants. Case law, as the commenter states, requires an analysis of the extent that applicants may have a reliance interest in the continuation of the policy. As stated in the 30-day Federal Register notice, means tested benefits are obtained for the purpose of that benefit program, and not in reliance on being able to use that benefit award letter to obtain free immigration benefits from USCIS.
23	IEFA Fee/Fee Calculation	Attributed to Many	USCIS also does not propose to lower the fee for naturalization and other applications based on the Proposed Change. USCIS offers no analysis of the reduced fees it might be able to provide. In assessing the burden of further information collection and review, USCIS should not take into account potential savings or reduced cost-shifting achieved by granting fewer waivers by heightening standards or deterring qualified applicants from requesting a fee wavier-or applying for citizenship at all-due to the increased burden of providing supporting information.	The effects of this change are unknown at this point, although USCIS expects its revenue losses from fee waivers to decrease over time. DHS will consider the actual fiscal impacts of this change in the next comprehensive review of costs and revenue when it considers adjusting USCIS fees as required by the CFO Act. As the commenter indicates, the actual results could have an effect on fee levels, once that effect is known. USCIS fees, however, do not need to be adjusted concomitant with this or any other policy change that may affect revenue or costs.
24	IEFA Fee/Fee Calculation	Attributed to Many	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.	USCIS appreciates that paying for an immigration benefit request is an expense to be borne by immigrants along with other living and household expenses, and whether to devote limited income to USCIS fees or buying an automobile, for example, must be considered. Nevertheless, Congress has established that USCIS will be operated using fees to be charged for its services, and we assume that the concerns expressed by the commenter of delay, income, and affordability were considered when the legislation was enacted.
25	Limits natz/benefit	Attributed to Many	The proposed rule would cut off access to citizenship for hundreds of thousands of eligible immigrants who apply for a fee waiver due to the high cost of application fees.	Although the means-tested benefit criteria is being removed, applicants would still be eligible for file under the criteria of having income at or below 150 percent of the Federal Poverty Guidelines, or having a financial hardship. USCIS does not believe the changes are an excessive burden on respondents.
26	Limits natz/benefit	Attributed to Many	The cost of applying is one of the main barriers to immigrants applying for naturalization.	This change is in no way intended as a barrier to citizenship or any other immigration program, benefit, or request, especially for low income aliens. As stated in the Federal Register Notice, USCIS 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. 83 FR 49120 (Sept. 28, 2018). To increase the consistency in the shifting of the cost of fee waivers to those who pay fees, USCIS has decided to apply more consistent standards of income and financial hardship for the purposes of determining inability to pay a fee.
27	Limits natz/benefit	Attributed to Many	Preventing individuals from accessing the fee waiver through use of public benefits would discourage eligible immigrants from becoming citizens based on their wealth and class status.	USCIS disagrees that removing the means tested benefit criterion will cause fewer eligible immigrants to become citizens. A fee waiver is not required to apply for naturalization and individuals would still be eligible for fee waivers as previously discussed.
28	Limits natz/benefit	Attributed to Many	The proposed change will prevent people from becoming voters.	The change in policy is not expected to reduce the average annual number of Applications for Naturalization or prevent people from becoming voters.
29	Limits natz/benefit	Single	Many of NWIRP's clients in the naturalization uni: are individuals who obtained their lawful permanent resident (LPR) status as a refugee or asylee and who have since needed to access the Supplemental Security Income (SSI) program. However, that program places a limit on receipts of these benefts for people who obtained their LPR status through the refugee or asylum process: they can only receive this support for seven years, unless they become U.S. citizens.9 For this group of clients, there IS a deadline and one that can have profound implications if the proposed changes to the fee waiver form prevent them from accessing the naturalization process. This would not only prevent them from becoming U.S. citizens but would prevent them from continuing to access resources they urgently need to support their basic needs.	Refugees and asylees who apply for subsequent benefits may submit a copy of their federal income tax return to request that their USCIS fee be waived.
30	Limits natz/benefit	Single	However, suggesting that eligible applicants defer requesting citizenship due to inability to demonstrate financial hardship contradicts the policies set forth in the USCIS "Guide to Naturalization".	In addition, USCIS has not and is not suggesting that anyone defer requesting citizenship for any reason. We are simply adjusting our fee waiver policy.
31	One Form Per Person	Attributed to Many	USCIS says the change would apply to fewer than ten percent of fee waiver requests, based on past experience. It is inconceivable that the agency construes this as no great burden, when the figure it cites equates to more work for tens of thousands of applicants annually.	The changes will not increase the burden on USCIS' review of fee waiver requests. The burden may increase for households with several members, but USCIS has found that over 90 percent of Form I-912 filings were filed for one person on one form. The change will reduce the number of fee waiver requests that are rejected. We think these benefits exceed the small increase in burden that this change may add.
32	Other Federal, State and Local Agency Burden	Attributed to Many	The proposed fee waiver application procedures would impose significant burdens on government agencies outside the USCIS. It would increase the workloads of employees processing requests for tax transcripts and letters affirming non-obligation to file taxes, and their counterparts at other agencies that distribute or keep data about sources of income. USCIS's proposal would newly require most or all fee waiver applicants to submit documents from the IRS, adding additional costs and burden on the IRS to fulfill requests. By effectively requiring many prospective applicants to seek more extensive original records of circumstances affecting income, USCIS is likely to make more work for government agencies in [my state], and for entities such as the Social Security Administration and the Federal Emergency Management Administration.	As part of its regular operations, the Internal Revenue Service (IRS) provides customer service including providing tax transcripts. Tax transcripts can be obtained by calling the IRS or submitting a request online, through the mail or by fax. As the IRS, and other Federal, State, and Local Agencies regularly provide information and services to their customers as part of their daily operations, the proposed form changes should have a minimal impact on them.

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33	Other Federal, State and Local Agency Burden	Attributed to Many	State and local governments are also likely to take on more costs and burden if USCIS makes the fee waiver application process more complicated. and fewer people are able or willing to seek citizenship and other immigration benefits. Access to immigration status and naturalization provide vital protection and security, help stabilize families, and create more integrated, harmonious communities. Added barriers to immigration benefits will tend to force states and municipalities to divert resources to provide support to low income populations, or to create funds to ensure that low income people and families receive immigration benefits	USCIS disagrees with the commenter's suggestions of a tenuous connection between this policy change and the need for social services from states. because USCIS does not believe the policy change will result in a decrease in the number of people applying for naturalization.
34	Public Comment Notice	Attributed to Many	The Proposed I-912 Revisions are a significant and substantive change in the fee waiver standards disguised as a form revision. Changes to official USCIS standards regarding fee waivers must be done in accordance with the Administrative Procedure Act ("APA"), Pub. L. 79–404, 60 Stat. 237, and follow the required process and procedure. The PRA process does not substitute for APA notice-and-comment rulemaking.	DHS is aware that if an agency adopts a new position inconsistent with an existing regulation, or effects a substantive change in the regulation, notice and comment are required under the Administrative Procedure Act (APA). 5 U.S.C.A. § 553(b)(3)(A). However, the form and instructions for USCIS Form I-912 only provide the USCIS interpretation of the inability to pay as provided in 8 CFR 103.7(c) and the procedures for requesting a fee waiver. Therefore, Form I-912 and its instructions are an interpretive rule and procedural rule. An agency may issue a new interpretation of a regulation that deviates significantly from the agency's previous interpretation without following the APA's rulemaking provisions. See Perez v. Mortgage Bankers Ass'n, 135 S.Ct. 1199 (2015). In addition, the APA procedural-rules exception provides that agency may change the procedures for applying standards without engaging in notice and comment rulemaking. See James v. Hurson Associates, Inc. v. Glickman, 229 F.3d 277 (D.C. Cir. 2000). That a rule adds burden to the affected regulated public does not mean it is not a procedural rule. Id. Thus USCIS is not required to use the APA's notice-and-comment procedures to amend or repeal an interpretive or procedural rule, such as its fee waiver policy and Form I-912. In Perez the Supreme Court also held that, although an agency can change its interpretation of a regulation at different times in its history, the interpretative changes can create no unfair surprise. See Perez, 135 S.Ct. at 1208, fn. 2; see also Long Island Care at Home Ltd. v. Coke, 551 U.S. 158, 171 (2007) (holding that Seminole Rock and Auer deference is inapplicable when there is a strong potential for unfair surprise); Christopher v. SmithKline Beecham Corp., 567 U.S. 142 (2012). Accordingly, USCIS acknowledges that individuals who may have planned to file a request or a waiver may argue that changing a multi-year practice of accepting a means tested benefit as proof of inability to pay is a binding regulation. However, fee waivers are an exercise by DHS of the discretionary authority provided in INA section 286(m), 8 U.S.C.1356(m) to provide certain services for free, and the regulations codified under that authority at 8 CFR 103.7(c) provide that fee waivers are at the discretion of USCIS. Commenters on this form change also have not identified any action that they may have taken to their detriment in reliance on USCIS continuing its current policy. To the contrary, if an individual chooses to apply for and is granted a means tested benefit, it will be because they need the benefit and not because they wanted to use proof of such a benefit to obtain a USCIS fee waiver request. Stated more directly, an applicant for a USCIS immigration benefit would not seek to temporarily obtain means tested benefits simply so they could use the award letter to attach to their Form I-912 requesting that their USCIS fee be waived. Thus removing that requirement should not be detrimental
35	Public Comment Notice	Single	Although the Proposed I-912 Revisions were initially posted on September 28, 2018, the supporting materials showing the specific changes to be made to Form I-912 and the accompanying instructions were not posted to the docket until October 1, 2018. Until these supporting materials were posted, it was extremely hard for the public to appreciate the nature of the proposed changes and to prepare meaningful comments. Thus, USCIS erred in failing to post the proposed revisions for the full 60-day period necessary for review.	USCIS regrets the 3 day delay. Nevertheless, as was the method for providing public comments on revisions of information collection requests between 1995 when the Paperwork Reduction Act was passed, and 2001 when regulations.gov was stood up, USCIS provided an information contact from which an interested member of the public who needed to obtain the proposed changes to review could have requested them. Agencies are not required by law or regulation to make a revised form available for inspection and review in regulations.gov and many agencies do not, But USCIS appreciates the convenience that using the Federal Docket Management System provides for managing comments on its OMB approved information collection requests. Thus, we provide more access to our form revisions than is generally provided by other agencies or required under the PRA
36	Public Comment Notice	Single	In the past, changes to the I-912 form have been accompanied by a Supporting Statement and Public Comment Matrix (see changes made in June 2015, >https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201506-1615-006<) It is unclear to me when those should be posted on the OMB web site, but I have not been able to find a supporting statement for the current changes or any document showing that public comments have been considered.	USCIS will post all documents that are required to be submitted to OMB-OIRA at the time that the agency submits the revised form for OMB review. Posted documents will include the supporting statement, all comments received, a summary of the comments, and the agency's responses to the comments.
37	Public Comment Notice	Attributed to Many	The notice also stated that if USCIS finalized this change, it would eliminate the current USCIS Fee Waiver Guidance and replace it. No new proposed guidance was published for public comment....Thus far, unlike during consideration of the 2011 Fee Waiver Policy Memo, stakeholders have not yet been informed of any public engagements whereby feedback can be provided directly to USCIS regarding the prospective changes to the policy memorandum. We would appreciate such an opportunity to provide our educated feedback on whatever changes to the policy memorandum are being considered.	The USCIS policy manual is internal guidance for USCIS officers to use in administering programs, and it is not subject to public review and comment under the Paperwork Reduction Act or the Administrative Procedure Act. As for fee waivers and the Form I-912, the policy manual changes will be consistent with, and not more extensive than, the changes to the form instructions posted for comment. Thus the commenter has access to the policy change on which to comment.

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38	Public Comment Notice	Attributed to Many	On April 5, 2019, the current notice was published, stating that USCIS was proceeding with the change, eliminating public benefits receipt as an eligibility ground for the fee waiver. and that it was proceeding with the form revision. Fee waivers based on "poverty income guidelines threshold and financial hardship criteria" will apparently be retained, although no details are offered. The notice also announced that the current fee waiver guidance would be rescinded, and new guidance would be issued. There was no discussion of the 1,198 comments received in response to the September 28, 2018 notice.	USCIS has responded to the public comments in its submission to OMB/OIRA as required under the PRA. In addition, the responses to the comments on the 60-day notice were provided in the docket for review. The commenter is incorrect that no details were offered. The form instructions outlining the change were clearly provided in the docket for review.
39	Regulation Change	Attributed to Many	Agencies must "examine the relevant data and articulate a satisfactory explanation for its action, including a rational connection between the facts found and the choice made." State Farm, 463 U.S. at 43.	USCIS has explained its rational basis for making this change in the three Federal Register Notices and in its responses to the public comments received.
40	Regulation Change	Attributed to Many	Cost to the agency is not a lawful factor to consider, and thus it cannot be part of the agency's analysis. E.g., Robbins v. Reagan, 780 F.2d 37, 48 (D.C. Cir. 1985) (agency's decision is procedurally invalid if based on "impermissible or irrelevant factors," particularly when the agency makes a "change in direction from a previously announced intention"); see also State Farm, 463 U.S. at 43 (the agency must consider "the relevant factors" and errs if it "relied on factors which Congress has not intended it to consider") (emphasis added).	USCIS has explained its rational basis for making this change in the three Federal Register Notices and in its responses to the public comments received.
41	Regulation Change	Single	Does not meet the standard of SPS	USCIS has explained its rational basis for making this change in the three Federal Register Notices and complied with all applicable standards.
42	Regulation Change	Attributed to Many	Rulemaking is invalid under the Administrative Procedure Act if the agency "entirely failed to consider an important aspect of the problem."	This change is not a rulemaking and USCIS has considered all aspects of the problem as explained in the notices, the supporting statement, and our responses to public comments.
43	Regulation Change	Attributed to Many	The PRA obligates federal agencies to minimize burden and increase the utility of data collection from members of the public; current procedures that honor previous agency adjudications of financial need bring efficiency to fee waiver adjudication.	The additional burden imposed by this change was considered and they have been overridden by practical considerations of expenses, costs, and revenue.
44	Regulation Change	Attributed to Many	Here, however, much more than a form or collection of information is involved, and the use of streamlined PRA process is inappropriate. The changes proposed here are not information collection. Instead, they go to the heart of a substantive eligibility requirement. The proposed changes to the fee waiver eligibility criteria and accepted forms of evidence represent a fundamental change in the law that is being finalized without sufficient public notice and comment.	USCIS realizes that the change to the information accepted for a fee waiver is a policy change regarding the interpretation of "unable to pay" as provided in 8 CFR 103.7(c). Thus the change, as well as the original policy, are effective as an interpretive rule. USCIS may rescind an interpretive rule using the same method as it used to issue the interpretation that is being rescinded. *See Perez v. Mortgage Bankers Ass'n* , 135 S.Ct. 1199 (2015). In this case, USCIS used and is using the form instructions, public notice, and the OMB approval requirements of the PRA to effectuate the original policy and this change. An agency can change its interpretation of a regulation at different times in its history if the interpretative changes create no unfair surprise. *Long Island Care at Home Ltd. v. Coke* , 551 U.S. 158, 171 (2007) (holding that *Seminole Rock* and *Auer* deference is inapplicable when there is a strong potential for unfair surprise). See, also, *Christopher v. SmithKline Beecham Corp.* , 567 U.S. 142 (2012). USCIS has published three Federal Register notices requesting public comment on these proposed changes as required by regulations at 5 CFR 1320.8(d)(1) (83 FR 49120) and 5 CFR 1320.10(a) (84 FR 13687), plus an additional notice to clarify the nature of the proposed policy changes. 84 FR 23167 (June 5, 2019). Thus, the affected public will not be surprised by this change, and USCIS is permitted under applicable law and regulation to make it.
45	Requiring IRS transcripts	Attributed to Many	Currently, applicants can submit a copy of their most recent federal tax returns to meet this requirement. The government does not provide any reason as to why a transcript is preferred over a federal tax return. Federal tax returns are uniform documents and most individuals keep copies on hand.	USCIS currently requests copies of income tax returns from applicants requesting fee waivers. Tax transcripts are easily requested through the Internal Revenue Service (IRS) website or though paper filing and are free to taxpayers. USCIS cannot accept incomplete copies of tax returns or copies that are not signed or submitted to the IRS to support fee waiver requests. Therefore, USCIS believes that requiring transcripts will reduce the number of fee waiver request rejections. In terms of the Non-filing letter from the IRS, USCIS is concerned about not receiving documentation of no-income. Therefore, obtaining information from the IRS in transcripts, a W-2, or proof of non-filing, if applicable, is sufficient documentation to establish the necessary income or no income
46	Requiring IRS transcripts	Attributed to Many	Many of our clients do not have the internet at home or ready access to a computer. In order to request tax transcripts from the IRS, they would need to make a special trip to the IRS office. In contrast, they often have a copy of their tax return already, which provides nearly identical information.	IRS Form 4506-T may be submitted in paper form to the IRS by mail.
47	Requiring IRS transcripts	Attributed to Many	USCIS claims that these individuals should not face additional barriers to pursuing fee waivers because the information they used to seek a means-tested benefit should be "readily available" to provide to USCIS. In our experience, this type of documentation is not in fact "readily available" (nor is it the same as what the proposed form would now require). Further, many of our clients experienced challenges to be able to demonstrate the criteria to qualify for a means-tested benefit in the first place. USCIS is asking them to go through the process again, a burden that is not, as USCIS claims, "minimal."	Income documentation needed for fee waivers would also be needed for establishing eligibility for public benefits which as the commenter indicated the alien would already need to establish with the public benefit granting agencies. The alien would provide the same documentation of income i.e. tax transcripts or W-2 to establish eligibility for the fee waiver.
48	Requiring IRS transcripts	Single	...if the applicant does not have an SSN or an ITIN, the IRS will not be able to process Form 4506-T or otherwise issue a verification of nonflying.	The IRS will be able to document that a return was not filed for such cases in addition the alien may provide a W-2 as described in the form instructions.
49	Requiring IRS transcripts	Single	Moreover, there is a discrepancy between the language used by USCIS in the initial docket regarding the Proposed I-912 Revisions and the present one; initially, USCIS stated that an individual with no income or proof of income should "submit a Verification of Non-filing from the IRS." USCIS then explained in its responses to public comments that it was "concerned about not receiving documentation of no-income," but its current formulation leaves some residual ambiguity about whether USCIS will accept a verification of nonfiling or is seeking some other unspecified IRS documentation as proof of the applicant's lack of income.	USCIS will accept a Verification of Non-filing, to establish that no is income is received.

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50	Requiring IRS transcripts	Single	Moreover, USCIS would put itself in the position of having to continuously track changes made by the IRS to its transcript request processes.	USCIS periodically reviews available and valid IRS documents, to keep abreast of any changes. Additionally, since each Fee Waiver Request is reviewed by an adjudicator. any new or updated documentation formats that are identified are communicated to supervisors and researched for validity. The entire team is then notified of the new or updated documentation and Standard Operating Procedures are modified.
51	Requiring IRS transcripts	Single	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 single 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. For example, filings with the IRS omit income not subject to taxation but relevant to fee waiver adjudication, such as Supplemental Security Income or personal gifts or inheritance.	USCIS realizes that the change may increase the complexity of the review that its officers must conduct to approve a fee waiver.
52	Requiring IRS transcripts	Attributed to Many	The proposed changes make the form more complex and will likely lead to individuals making more mistakes, adding to the processing time of the application and further adding to the deterrent effect of these changes. In some cases, applicants may not be able to complete the form in time to meet required deadlines because of a lack of required documents.	USCIS has acknowledged that the burden of completing the form will increase somewhat, and that applicants must plan for that when preparing their applications as is the case with all form updates.
53	Requiring IRS transcripts	Attributed to Many	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 and their household members already have (e.g. with 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 is aware of and has considered the burden of obtaining tax transcripts versus means tested benefit award letters.
54	Requiring IRS transcripts	Single	NWIRP is also concerned about the impact of the proposed changes on individuals who have been granted or who are seeking asylum. In most cases, these individuals are recent arrivals to the United States and therefore have limited ability to prove their income or financial situation. And while they may not have to pay a filing fee for the asylum application or their initial employment authorization document (EAD) at this time, they do have to pay fees for renewal EADs and adjustment of status applications. If asylees or asylum applicants have to seek a fee waiver for these applications, the proposed changes would narrow down the documentary evidence that could be submitted in a way that would make it difficult for asylum seekers and asylees to be able to establish their eligibility. This is the case because individuals who have recently arrived may not yet have been in the U.S. long enough to have had to file a tax return or otherwise obtained enough documentation of their employment and income history.	Asylees may provide a Verification of Non-filing, and would still be eligible for the fee waiver as described in the form instructions.
55	Requiring IRS transcripts	Single	Finally, NWIRP is also concerned about the impact the proposed changes will have on individuals who are applying for immigration benefits while they are in immigration detention. Although many forms of immigration protections are adjudicated by the immigration judge, we commonly encounter situations in which an individual must pursue an application for immigration protection that can only be adjudicated by USCIS, such as an I-192 form to waive inadmissibility associated with a petition for U non-immigrant status. Frequently, individuals in detention will need a fee waiver to be able to pursue these forms, particularly as the circumstances of being detained will have had a negative impact on their financial situation. However, the changes proposed by DHS will make it even more complicated and burdensome for people in immigration detention to be able to gather the documentary evidence necessary to meet the proposed revised criteria for fee waivers. This will result in longer stays in detention for people pursuing these types of immigration protection.	Detainees may provide other evidence as provided in the form instructions besides tax returns or transcripts. There is no one in any situation who will not be able to request a fee waiver under the revised instructions.
56	Requiring IRS transcripts	Single	...the proposed changes will result in delays for people in immigration detention as they will now have to wait for IRS responses to their request for the documentary evidence envisioned by the proposed changes. This will mean that these applicants will have to ask the immigration court to continue their cases while they remain detained and will lead to substantial expenses on the part of the government through increased detention costs, aside from the obvious impact on immigrants themselves.	USCIS is making no changes to the policies or procedures that the Department of Justice, Executive Office of Immigration Review, Immigration Court judges will follow when waiving fees for someone who is in removal proceedings.
57	Requiring IRS transcripts	Attributed to Many	In addition, many applicants will be unable to get the additional documentation necessary to establish eligibility for a fee waiver if the means-tested-benefit option is eliminated and they may therefore decide to forgo the application in the first place. USCIS appears to acknowledge this when it states that, since "there is no time limit for applying for naturalization," applicants may simply postpone their application and "save funds" to pay for the fee. However, USCIS does not address the variety of deadlines the Immigration and Nationality Act and implementing regulations impose outside the naturalization context. And even in the naturalization context, for many low-income applicants, saving funds is not a realistic possibility and the postponement that USCIS proposes will really mean a denial of access to the naturalization process.	USCIS does not agree with the commenter that removing the means tested benefit criterion for receiving a fee waiver equates to removing access to the naturalization process for thousands of people. Those people can file an affidavit or Verification of Non-filing and would still be eligible for fee waivers.
58	States Rights	Single	The justification provided in the Federal Register for these changes is not adequate for a number of reasons. First, states verify an applicant's income before providing Medicaid or a similar low-cost health insurance coverage. The applicant has to provide their tax returns and/or documented proof of income by means of pay stubs and proof of employment to qualify for coverage. USCIS should not distrust the states in their ability to verify an applicant's income. States are the original administers of the public welfare under the U.S. Constitution, and especially under a supposedly Republican executive branch, we should respect states' rights and not subsume their sovereignty by mandating that a federal agency meddle in what should be an easy question for states to resolve.	USCIS fee waiver eligibility only impacts the waiver of USCIS fees and does affect a state's determination for eligibility of public benefits or income determinations for the public benefits. This form change and policy does not affect state's rights or change the process of states for eligibility of mean-tested benefits. As previously indicated, the eligibility requirements for means-tested benefits differ by state and therefore are an inconsistent determination for USCIS purposes. In order to streamline and make the standards consistent USCIS is limited to the 150% of the FPG determination which many of the people receiving means-tested benefits would qualify under. In addition, aliens would also qualify with a financial hardship as provided in the instructions.

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59	USCIS Burden/backlog /impact	Attributed to Many	The imperative of improved efficiency is particularly strong in 2019 in light of the fact that backlogs of naturalization and other applications awaiting adjudication have been growing since 2016. and have considerably lengthened the waits that immigrants and their American relatives and employers experience for final action. USCIS officers are accustomed to handling simple fee waiver applications based on receipt of means-tested benefits, and would need additional training and time to process larger caseloads of more complex fee waiver applications accompanied by more voluminous documentation.	USCIS believes that the proposed change will reduce its administrative burden for fee waiver processing. USCIS currently requests copies of income tax returns from applicants requesting fee waivers. Tax transcripts are easily requested through the Internal Revenue Service (IRS) website or through paper filing and are free to taxpayers. USCIS is confident that the IRS can handle the additional number of requests for tax transcripts that this change will require. USCIS cannot accept incomplete copies of tax returns or copies that are not signed or submitted to the IRS to support fee waiver requests, because such a lax standard would encourage fraud in the fee waiver process. Therefore, USCIS believes that requiring transcripts will reduce the number of fee waiver request rejections. USCIS believes the change will reduce the number of fee waiver requests that are rejected because of improper documentation, inadequate information and no signatures for household members. We think these benefits exceed the small increase in burden that this change may add.
60	USCIS Burden/backlog /impact	Attributed to Many	There is no need to impose that burden on adjudicators, since the work has already been done for those individuals who are able to apply as recipients of means-tested benefits.	USCIS appreciates the concern for the burden of officers however USCIS has considered the burden on adjudicators and determined the changes are necessary as described above.
61	USCIS Burden/backlog /impact	Attributed to Many	USCIS claims the changes will standardize, streamline, and expedite the process of 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. 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 does not believe the new policy will delay processing or deny access. USCIS would adapt and change its process as necessary to limit any increase in delays. USCIS thinks that this policy change will help reduce backlogs.
62	USCIS Burden/backlog /impact	Single	Further, to the extent USCIS references concerns about its own workload or the rate of rejections, those concerns are not substantiated and should weigh in favor of retaining, rather than eliminating the means-tested benefit standard...We would expect that for individuals who would have applied using means-tested benefits, but now would have to apply for fee-waivers based on the extensive evidence of income or financial hardship that USCIS now proposes, these changes would mean that USCIS has to spend more time and effort to review each fee-waiver submission.	USCIS believes that the time spent to review the I-912 and the documentation would not be any more than the current process and it may be less. The review of the fee waiver request may be as simple as looking at one space or data element on the tax transcript instead of valicating if the letter provided is really about a means-tested benefit. That will make it easier to process fee waivers.
63	VAWA/T/U	Single	In its responses to comments, USCIS expressed its belief that the impacts of the Proposed 912 Revisions on VAWA, U, and T applicants will be "less pronounced than they will be on any other group," because, according to USCIS, "[t]he policy for VAWA, ... T, and U applicants and petitioners will be retained with this form change, aside from the Form I-912 now being required."60 While USCIS's acknowledgment of the importance of a flexible standard is a step in the right direction, TRLA maintains serious concerns that the Proposed I-912 Revisions are entirely insufficient to address the barriers that survivors face, particularly in light of the explicit Congressional intent that inability to pay should not prevent survivors from accessing immigration benefits.	USCIS has made specific provisions for VAWA, T, and U applicants and petitioners to account for the situations in which documentation of income may not be available due to victimization. Therefore, USCIS does not agree that it has imposed a more rigid standard for these populations. USCIS believes that the vast majority of VAWA, T, and U applicants and petitioners who are unable to afford fees will still have their fees waived under this new policy.
64	VAWA/T/U	Single	In the responses to comments, USCIS states—without explanation—that its position is that the "any credible evidence" standard does not apply to Form I-912. Although USCIS then sets out its rationale for a more flexible standard regarding the types of documentary proof that USCIS would view as sufficient for VAWA, U, and T applicants, and states that adjudicators "may consider whatever evidence is provided," it is not clear how much the proposed approach for adjudicating fee waivers will adhere to or deviate from the "any credible evidence" standard.	USCIS is not required to adhere to the any credible evidence standard for Form I-912. but USCIS considers and reviews all of the evidence provided with a fee waiver to determine if the request has documented the inability to pay. If an applicant is unable to provide a particular type of evidence, USCIS will consider the evidence the applicant is able to provide in lieu of the normally required evidence for applicants who have filed a VAWA, T, or U petition or application.
65	VAWA/T/U	Single	Although fee waiver adjudication is a distinct determination from a merits decision on a survivor's application, nowhere did Congress indicate that ancillary forms such as Form I-912 should be excluded from this codified mandate to apply a flexible standard. The rationale for the "any credible evidence" standard is just as strong regarding fee waiver adjudications as it is for merits determinations; from trafficking victims who were forced for years to work without pay to victims of domestic violence whose abusers controlled all their finances, survivors are unable to meet a stringent standard that requires primary documents. In the Proposed I-912 Revisions, USCIS is thwarting Congressional intent by impermissibly requiring specific types of evidence, such as IRS tax documentation, and failing to adhere to the "any credible evidence" standard.	In response to the commenter's comments on the 60-day notice, USCIS revised the form instructions for the 30-day notice and OMB submission to provide flexibilities for victim applicants. Victim applicants must still provide some evidence of their inability to pay as Congress has not exempted them from fees, but only provided that this group have an opportunity to request a fee waiver. Although not required by statute, USCIS retained flexibilities for the VAWA, T, and U population to submit any relevant evidence with their request if they are unable to provide the required evidence listed on the form.
66	VAWA/T/U	Single	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. 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.	The new policy does not require applicants to submit any particular type of evidence if they are unable to obtain it. Instead, they may submit other types of evicence, such as affidavits from religious institutions, non-profits, and other community-based organizations.
67	VAWA/T/U	Single	The Proposed I-912 Revisions thereby create a significant barrier to access to counsel. As each application becomes more time- and resource-intensive, TRLA is unable to serve as many survivors as before. Contrary to what Congress intended, the Proposed I-912 Revisions would exacerbate the barriers that survivors already face when seeking to access protection.	The changes only provide for a charge in the criteria for fee waivers and those that may be affected may still qualify for fee waivers under the other two criteria. These changes should not affect access to counsel.
68	VAWA/T/U	Single	Congress codified the use of fee waivers in certain 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.	All of the categories required by law to be able to request a fee waiver, may still do so after this change.

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69	VAWA/T/U	Single	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." 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 confidentiality protections in every form. We find USCIS' position to be dismissive of our concern. We raised this issue in our previous comment, 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 a VAWA self-petitioners. 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..... 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.	USCIS remains committed to protecting the safety of victims of domestic violence, trafficking, and other crimes by adhering to our obligations under 8 U.S.C. 1357. These protections apply to all information pertaining to individuals with a pending or approved VAWA, T, or U petition or application, which includes information provided on any USCIS form. Fee waiver requests submitted by applicants and petitioners who are protected under 8 U.S.C. 1367 are adjudicated by the same offices that adjudicate the benefit request, all of which receive training and guidance regarding these protections. It is unnecessary to reference the requirements and statute specifically on the form or instructions. Therefore, USCIS will not include specific reference to the confidentiality protections in Form I-912.
70	Cost of Living	Attributed to Many	Ability to pay isn't the same for two people with the exact same income who live in two different states with totally different costs of living.	Many applicants have requested a fee waiver based on the receipt of public benefits that are not means tested. In addition, means-tested benefits have a wide variety of eligibility requirements and income thresholds between states which includes incomes above the 150% of the Federal Poverty Guidelines. As the eligibility criteria varies by state, there is not a consistent standard for applying the local cost of living into their public benefits determination. This would require USCIS to review all public benefit requirements to determine whether it is a means-tested benefit, how the public benefit granting agency made their calculations, whether they took the local cost of living into consideration, and whether their requirements meet USCIS' determination of the inability to pay. Additionally, the burden and complexity of USCIS staff making their own fee waiver determinations based on calculations using the local cost of living for each applicant would be unsustainable and lead to additional backlogs. Thus, USCIS is standardizing fee waiver eligibility criteria based on income level or financial hardship for both consistency in decisions and to reduce its administrative burden for fee waiver processing.
71	Cost of Living	Attributed to Many	The fact that different jurisdictions make means-tested benefits available at varying income levels does not render means-tested benefits programs an inappropriate measure of financial hardship; instead, it proves that receipt of a means-tested benefit is an apt and accurate measure of ability to pay hundreds or thousands of dollars in immigration fees.	USCIS believes that the continued increase in fee waivers while the economic and incomes continues to grow, and unemployment decreases, coupled with the strong desire of commenters for us to retain the means tested benefit policy, are all indicators that means tested benefits are too easy to obtain for them to be good indicators of true inability to pay a USCIS fee.
72	Cost of Living	Single	USCIS's rationale for this change is that "USCIS 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." However, NWIRP submits that what USCIS claims is an inconsistency regarding income levels in fact reflects an appropriately consistent standard in relation to the regulatory standard of ability to pay.	Categorical eligibility for a fee waiver for means tested benefit recipients has caused fee revenue losses from fee waivers to increase. USCIS notes that USDA has noted a similar problem with the eligibility requirements for its Supplemental Nutrition Assistance Program (SNAP), resulting in significant variation across states in the SNAP eligibility determination process, and in program rules and operations. *See* 84 FR 35570. USDA found that, when using non-cash TANF benefits as the basis of categorical eligibility decisions, many States use income thresholds and resource limits that are higher than the Federal standards for SNAP. Households, who would not otherwise have qualified for SNAP due to their income or resources, are considered categorically eligible and therefore able to receive SNAP. Id. The determination and decision by USDA is important in this context because many USCIS fee waiver requests are accompanied by a letter from USDA approving SNAP benefits.
73	Cost of Living	Single	...the relevant regulation provides that the criteria for qualifying for a fee waiver is that the party requesting the immigration benefit show that they are "unable to pay the prescribed fee." 8 C.F.R. § 103.7(c)(1)(i). This inability to pay can depend on the cost of living in the particular state and region in which the applicant resides. The federal government itself recognizes the differences in costs in various regions in a number of ways, such as the Census Bureau's Cost of Living Index for Selected Urban Areas. The fact that states set different criteria for their means-tested benefits simply acknowledges the fact that there are different economic situations in various states and that what might be a level of income that is sufficient in one location is insufficient in another. In other words, the option of using the receipt of means-tested benefits to show inability to pay, as an alternative to an income-standard, is likely to lead to appropriately consistent adjudication of fee waiver requests	Many applicants have requested a fee waiver based on the receipt of public benefits that are not means tested. In addition, means-tested benefits have a wide variety of eligibility requirements and income thresholds between states which includes incomes above the 150% of the Federal Poverty Guidelines. As the eligibility criteria varies by state, there is not a consistent standard for applying the local cost of living into their public benefits determination. This would require USCIS to review all public benefit requirements to determine whether it is a means-tested benefit, how the public benefit granting agency made their calculations, whether they took the local cost of living into consideration, and whether their requirements meet USCIS' determination of the inability to pay. Additionally, the burden and complexity of USCIS staff making their own fee waiver determinations based on calculations using the local cost of living for each applicant would be unsustainable and lead to additional backlogs. Thus, USCIS is standardizing fee waiver eligibility criteria based on income level or financial hardship for both consistency in decisions and to reduce its administrative burden for fee waiver processing.
74	Reassessing Waste of Taxpayer Dollars	Single	This proposed change will increase the cost to federal taxpayers and USCIS adjudicators. USCIS adjudicators, who are more accustomed to handling "simple" fee waiver applications based on receipt of a means-tested benefit, will need additional training to process caseloads of complex fee waiver cases and training on the additional documentation requirements. Applications based on the remaining grounds would take much longer for a USCIS officer to adjudicate—and for an applicant or legal service provider to prepare—than one based on receipt of a means-tested benefit. This will cost a huge amount of money to taxpayers who have to pay when USCIS adjudicators need training or delay in adjudication because applications are becoming unnecessarily complex.	USCIS is funded through fees and taxpayer dollars are not used in the adjudication of fee waivers. Currently, the cost associated with applications and petitions that have been fee waived is shifted to other applications and petitions. Therefore, other applicants must cover the cost of fee-waived applications and petitions. Furthermore, and contrary to the commenters' suggestion, USCIS believes that the proposed change will reduce its administrative burden for fee waiver processing.

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75	Reassessing Waste of Taxpayer Dollars	Single	This proposed change will mean that applicants must request federal income tax transcripts from the IRS for them and their family members. This will create a huge burden on IRS offices. further costing the taxpayer tens of thousands of dollars as we have to pay IRS workers to create these documents. This system is duplicative and a huge waste of my money as a taxpayer.	USCIS is funded through fees and taxpayer dollars are not used in the adjudication of fee waivers. Currently, the cost associated with applications and petitions that have been fee waived is shifted to other applications and petitions. Therefore, other applicants must cover the cost of fee-waived applications and petitions. Furthermore, and contrary to the commenters' suggestion, USCIS believes that the proposed change will reduce its administrative burden for fee waiver processing. All such applicants are subject to the evidence requirements as provided in the revised form instructions, with specific provisions for these groups.
76	Reassessing Waste of Taxpayer Dollars	Single	In its response, USCIS states that because it is funded "through fees" and "taxpayer dollars are not used in the adjudication of fee waivers," all costs associated with the applications and petitions are "shifted to other applications and petitions." USCIS ignores the tax payer dollars that pay for means-tested benefit determination that are then re-adjudicated under the financial hardship standard.	The public benefit granting agencies make the determination of eligibility for the public benefits. USCIS' operations are separate from the public benefit granting agencies and are not funded solely by form fees.
77	I-912 Language Options	Attributed to Many	For immigrants with limited resources who may not speak English well, obtaining additional documentation from government agencies can be daunting....The Internal Revenue Service website is accessible only in Chinese, Korean, Spanish, Russian, and Vietnamese at this time. While the USCIS website has resources in more languages, it appears that information about Form I-912, but not the form itself, is available only in Spanish.	USCIS realizes that some applicants may have to obtain the services of an interpreter or translator to request some government services. There is no change regarding these provision in this form change.
78	Eliminating means-tested benefits	Attributed to Many	There are finite federal- and state-run programs offering means-tested benefits. USCIS has not established what percentage of those programs do not have income thresholds that exceed 150% of the Federal Poverty Guidelines. Nonetheless, USCIS could readily determine which benefits do, and do not, have threshold requirements exceeding the 150% level. A summary chart or reference then be prepared for use in reviewing each application for fee waiver, to quickly identify which means-tested benefits are acceptable under USCIS criteria and which require that the applicant's eligibility be re-adjudicated for a hardship waiver.	USCIS appreciates the suggestion, but believes that it would be more difficult than the changes that we are proposing.
79	Eliminating means-tested benefits	Single	"Additionally, at a recent tour of the Chicago USCIS Lockbox on Apr. 27, 2018, the Intake Operations Division staff expressed with AILC the value to the agency and the customer of a bright-line test for adjudication of fee waiver requests. CBO partners have shared this experience during USCIS Chicago Lockbox tours as well. The USCIS continues to fail to consider this practical, administrative consideration in its Federal Register notice and response to comments."	USCIS has considered all factors associated with this change in making its decision, including those raised by public commenters.
80	Analytical Evidence	Attributed to Many	USCIS fails to provide any evidence that accepting proof of receipt of a means-tested benefit has led the agency to grant fee waivers to individuals who were able to pay the fee.	The term in the regulations, "unable to pay," is inherently subject to interpretation, and empirical data of ability and inability to pay a fee depends on multiple factors, such as income, the ability to save money, credit availability, and competing priorities. USCIS interpreted "unable to pay" as receiving an means-tested benefit, but is now changing that interpretation to be more consistent.
81	Analytical Evidence	Attributed to Many	Rulemaking is invalid under the Administrative Procedure Act if the agency "entirely failed to consider an important aspect of the problem."	As previously indicated, these form changes are not a rulemaking. Further, the commenter does not explain or provide any support for their assertion. USCIS has considered all important aspects of this policy change.
82	Analytical Evidence	Attributed to Many	Agencies must "examine the relevant data and articulate a satisfactory explanation for its action, including a rational connection between the facts found and the choice made." State Farm, 463 U.S. at 43.	USCIS has provided a rational basis in its three Federal Register notices and in its responses to the public comments.
83	Analytical Evidence	Attributed to Many	USCIS has not provided any data about what percentage of fee-waivers are granted based on each of the three criteria	One study that USCIS conducted in 2017, indicated that 71.9 percent of the fee waiver receipts were approved based on receipt of means-tested benefits, and 26.9 percent based on household income below 150% of the FPG.
84	Analytical Evidence	Attributed to Many	When promulgating a new rule, agencies must "examine the relevant data and articulate a satisfactory explanation for its action, including a rational connection between the facts found and the choice made." State Farm, 463 U.S. at 43. The agency's burden is heightened in cases when it rescinds and replaces a pre-existing rule. Encino Motorcars, LLC v. Navarro, 136 S. Ct. 2117, 2125-26 (2016) (citing State Farm, 463 U.S. at 43). In those cases, "a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy." Id. at 2126. The agency must "show that there are good reasons for the new policy" and evaluate the "serious reliance interests" engendered by the prior rule. Id.	This change is not a rulemaking and USCIS has considered all aspects of the problem as explained in the notices, the supporting statement, and our responses to public comments.
85	Increased Errors-Complexity	Attributed to Many	The complexity of the remaining fee waiver criteria will lead to more errors (Applicant and adjudication)	USCIS currently reviews all requests for all the previous criteria in the policy and therefore does not believe that eliminating one criteria will lead to addition errors.
86	Increased Errors-Complexity	Attributed to Many	Currently reject reasons for Fee Waivers submitted on Income at 150% FPG are not detailed enough to resolve issues. The USCIS notifications of fee waiver denials do not provide adequate information about why the supporting documentation was insufficient, leaving practitioners in the dark about how to strengthen fee waiver requests."	USCIS disagrees. USCIS fee waiver rejections now provide details on the reasons for the rejection.
87	Increased Errors-Complexity	Attributed to Many	Currently some rejected applications are resubmitted/sentback to USCIS with same info and are approved.	USCIS receives over 750,000 fee waiver requests per year. USCIS appreciates the comment and will continue to provide training and review of cases for consistency.
88	Increased Errors-Complexity	Single	It is very common for us to get denials of fee waiver requests for applications based on those two categories [income below 150% FPG and Financial Hardship]. However whenever we email the USCIS Lockbox to ask them to address the error in the denial, in our experience, 100% of those requests are approved.	As indicated by the commenter, USCIS has a process for resolving errors or issues with requests and will continue to do so.
89	Increased Errors-Complexity	Single	Moreover, in our experience, between 50-75% of income-based fee waivers filed by our clients are initially rejected and must be resubmitted; the vast majority of resubmissions are ultimately approved by USCIS. USCIS did not address this resubmission rate for income-based fee waivers in its Response.	There are various reasons that resubmissions are necessary including lack of documentation or lack of proper signatures. In providing additional information in the instruction and having the forms be individually submitted for each member of the family, USCIS' goal is to also reduce rejections.

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90	Decision by FPG is Subjective	Attributed to Many	Revised fee waiver criteria will lead to arbitrary and capricious decisions.	USCIS disagrees that any decisions will be arbitrary or capricious as the requirements for a request are clear. If the alien meets the criteria and provide the appropriate documentation. USCIS will likely exercise its discretion to approve the waiver. Decisions will be based on if the applicant has documented that they are unable to pay as provided in the form instructions.
91	Redo Other Gov Analysis	Attributed to Many	There is no need to impose that burden on adjudicators, since the work has already been done for those individuals who are able to apply as recipients of means-tested benefits.	See previous comment response.
92	Redo Other Gov Analysis	Attributed to Many	Disqualifying means-tested benefits, which have already been adjudicated and issued by a fellow federal agency, not only undermines the reliability of the other agency's data and methodology, but is wasteful of both government and individual resources and time, goes against precedent, and is arbitrary, failing to fairly measure an individuals' inability to pay a fee.	USCIS disagrees that any decisions will be arbitrary or capricious as the requirements for a request are clear. If the alien meets the criteria and provide the appropriate documentation, USCIS will likely exercise its discretion to approve the waiver. Decisions will be based on if the applicant has documented that they are unable to pay as provided in the form instructions.
93	Redo Other Gov Analysis	Single	USCIS fails to address the increase time costs to the agency in re-adjudicating income that a public-benefit granting agency had already determined.	USCIS disagrees that any decisions will be arbitrary or capricious as the requirements for a request are clear. If the alien meets the criteria and provide the appropriate documentation, USCIS will likely exercise its discretion to approve the waiver. Decisions will be based on if the applicant has documented that they are unable to pay as provided in the form instructions.
94	Redo Other Gov Analysis	Attributed to Many	Individuals who have already passed a thorough income eligibility screening by government agencies should not have to prove their eligibility all over again to USCIS. By eliminating receipt of a means-tested benefit to show eligibility, the government is adding an additional burden on immigrants who already are facing the economic challenge of paying for application fees.	USCIS disagrees that any decisions will be arbitrary or capricious as the requirements for a request are clear. If the alien meets the criteria and provide the appropriate documentation, USCIS will likely exercise its discretion to approve the waiver. Decisions will be based on if the applicant has documented that they are unable to pay as provided in the form instructions.
95	Redo Other Gov Analysis	Attributed to Many	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.	USCIS disagrees that any decisions will be arbitrary or capricious as the requirements for a request are clear. If the alien meets the criteria and provide the appropriate documentation, USCIS will likely exercise its discretion to approve the waiver. Decisions will be based on if the applicant has documented that they are unable to pay as provided in the form instructions.
96	VAWA/T/U-miss deadlines	Single	The Proposed I-912 Revisions could harm survivors who are confronting these deadlines in at least two ways. First, the burden of preparing a fee waiver request could cause applicants to miss critical deadlines. For instance, if an applicant needs to file USCIS Form I-485 to adjust their status to legal permanent residency prior to the expiration of their U or T status, then delays in obtaining IRS tax documentation could cause applicants' current status to expire without adjusting, leaving them without recourse. Applicants who are unable to gather the required documentation for a fee waiver request to accompany USCIS FormI-290B could be unable to file their appeal before the deadline. Second, if USCIS denies the fee waiver request and sends back the entire application package (even though it was otherwise timely filed), critical deadlines may pass before applicants are able to obtain additional supporting documentation and resubmit their application package. Further, even delays in filing of applications can be harmful to the merits adjudication; for instance, part of USCIS's determination of eligibility for T nonimmigrant status is whether the applicant is physically present in the United States on account of their trafficking, which turns on how much time has passed between when the applicant escaped the trafficking situation and when the T application was filed.	USCIS realizes that applicants who are facing a deadline must consider if they will be asking for a fee waiver and its associated burden, when they are assessing the time necessary to prepare and gather their evidence for the immigration benefit request they plan to file.
97	VAWA/T/U-Abuser Tax Transcripts	Attributed to Many	That obtaining tax transcripts for ANY member of the household in which the abuser still resides risks the protections that VAWA intended to create for survivors of violence. Adult children or other family members could have a relationship with the abuser that could lead to disclosure of the applicant's request for their tax documents, triggering further abuse.	Although not required by statute, USCIS has retained flexibilities in the instructions for the VAWA, T, and U population permitting them to submit any relevant evidence of income with their fee waiver request if they are unable to provide the required evidence listed on the form due to their victimization or if requesting such evidence would trigger further abuse or endanger the individual.
98	SSN/ITIN Availability	Single	To file federal tax returns, individuals must have either been issued a Social Security Number ("SSN") or an Individual Taxpayer Identification Number ("ITIN"). A foreign national, regardless of immigration status, may obtain an ITIN if they have a U.S. tax filing requirement... It is not uncommon for survivors of domestic violence, sexual assault, human trafficking, and other criminal activity who are applying for immigration benefits to not have previously obtained an ITIN—whether because they were not earning income and thus were not required to file taxes, or because the circumstances of the abuse or trafficking prevented them from filing taxes... The IRS estimates that it could take up to seven weeks for an ITIN request to be processed, and that applications submitted during peak processing periods (January 15 through April 30) could take up to nine to eleven weeks.	These applicants may submit a Verification of Non-filing with their waiver request and additional affidavits etc., as provided in the revised instructions.

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99	Tax Records - Asylees	Single	The proposed changes to fee waiver documentaton will also negatively impact asylum seekers and asylees who rely on the friends. family members or partners with whom they live for financial and in-kind support. Under the proposed changes. establishing household income for fee waiver purposes would allow USCIS to request tax transcripts from household members. But tax records contain sensitive personal information, and even close family members may be unwilling to share these with an asylum seeker or asylee attempting to request a fee waiver. Immigrants with their own pending applications for immigration status as well as those concerned about potential negative consequences for their current legal status may be particularly worried about sharing private financial information with an asylum seeker, asylee, or their legal representatives.	Asylum applicants receive one free EAD.
100	Tax Records - Asylees	Single	Individuals who are self-employed or whose employers take advantage of their immigration status and fail to provide formal documentation of employment may not be able to produce official tax withholding documents, as the proposed changes would require as an alternative to tax transcripts. In addition, asylum seekers and asylees who fall victim to fraudulent tax preparers who fail to or incorrectly file tax returns may also have difficulty in obtaining the necessary tax transcripts to prove their income.	The revised instructions provide sufficient flexibility for self-employed applicants to provide income.
101	Natural Disaster	Single	Fee waiver applicants may not have access to documentation to demonstrate financial hardship that was destroyed in the storm. Many are in unstable living situations where their names may not be listed on the household's official documents, making it all but impossible for them to apply for a fee waiver with evidence of extreme financial hardship. In addition, their 2017 income taxes will not reflect their current financial realities because the storm hit toward the end of 2017. Those who are receiving means-tested benefits have already been found to be low income by the state or local government and have had their cases assessed by agencies familiar with the situations in areas affected by Hurricane Harvey	USCIS does not believe it is impossible for such alien to obtain a fee waiver. The form and instructions provide for the evidence that an alien may submit in order to establish financial hardship and provides for information on the inability to obtain documentation. This would include submitting documentation from the IRS that indicates no tax transcripts and no W-2s were found, see IRS Form 4506-T www.irs.gov/individuals/get-transcript. If the person is currently homeless and receiving support services, he or she may submit an affidavit from a religious institution, non-profit, or community-based organization verifying that he or she is currently receiving some benefit or support from that entity and that he or she has no income.
102	Alternative Income Evidence	Single	Human trafficking survivors, almost without exception, have been denied regular paychecks. Few survivors have any documentation of their labor, and the documentation that they have is often fraudulent. This fraud is, in fact, a key element of the trafficking crime. For those reasons, they are also unlikely to have filed taxes. Therefore, trafficking survivors are unlikely to have "primary documentation," such as pay stubs or tax transcripts.... However, the revised form does not include this exemption clearly stated in the form. Applicants for humanitarian based applications should simply be directed to skip all questions related to income derived from family members. Additionally, while the comments and revised form instructions note that alternative forms of proof will be accepted for applications related to VAWA, T and U Visa applications, the comments state that "Adjudicators of these benefits and their fee waivers may consider whatever evidence is provided."7 It should be clear that adjudicators will consider all evidence provided for these applications. It must also be noted that survivors of human trafficking also file other applications, such as the I-90, I-131, I-290B, and others. They may or may not have filed a VAWA, T or U Visa application, because they may have been trafficked while in TPS, DACA, or LPR status. Immigrants are also often victims of wage theft, labor exploitation, and other labor violations that do not rise to the level of labor trafficking, and thus may pursue other immigration remedies, but will still be unable to produce pay stubs or tax transcripts to document their eligibility for a fee waiver. These survivors should also be explicitly allowed to provide alternative evidence of their eligibility and USCIS should be explicitly required to consider all evidence provided for these applications.	USCIS appreciates the comment and note that the alien may provide any information that they want to be or that should be considered in reviewing whether he or she has financial hardship including victimization. The instructions also provide that if these applicants do not have any income or cannot provide proof of income as required in the paragraph above, he or she may describe the situation in sufficient detail on the form to substantiate the inability to pay as well as the inability to obtain the required documentation. Additionally, the alien may provide any available documentation of his or her income, such as pay stubs or affidavits from religious institutions, non-profits, or other community-based organizations verifying that he or she is currently receiving some benefit or support from that entity and attesting to his or her financial situation.
103	Eliminating means-tested benefits - impact on Disability Exception or SSI	Attributed to Many	Eliminating the ability to use receipt of a mean-tested benefit as proof of fee waiver eligibility, or any new requirements that make the process more complicated, will further burden those with disabilities in accessing an immigration benefit for which they are eligible. This is especially of clients who are applying for naturalization with Medical Certification for Disability Exception or who receive Supplemental Security Income ("SSI") and their families.	People who are applying for SSI may provide that same income documentation to USCIS with their fee waiver request.
104	Eliminating means-tested benefits - impact on Disability Exception or SSI	Single	Under the proposed changes to the fee waiver eligibility criteria, my clients receiving SSI would not be able to provide their SSI statement to apply for the fee waiver because SSI is considered a "means tested benefit". Instead, they would be required to provide a tax return transcript (different from a tax return) - which would mean contacting the IRS and waiting for this transcript in the mail. But because the usual SSI recipient is a senior and does not file federal tax returns, they would no longer qualify for the fee waiver under the new fee waiver eligibility criteria.	A person who does not file Federalincome tax returns or who does not have any income may still request a fee waiver and may provide the documentation as provided in the form instructions.

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105	New Income Questions	Single	USCIS is proposing to collect information which is not necessary for the proper performance of the agency's functions and does not have practical utility for the agency. As part of the Proposed I-912 Revisions. the fee waiver form would require the applicant to state whether they or their household members filed a federal tax return for the last year, and, if not, the applicant must select the reason for not filing and provide an explanation. These questions are not necessary to this proposed revision of the collection activity. In particular, Proposed Question 7—which would require the applicant to explain why the applicant or a household member did not file a tax return—is not of any utility to USCIS in adjudicating fee waiver requests and USCIS has not articulated a necessity for this information. USCIS has explicitly and repeatedly stated that its purpose in requiring tax transcripts or verifications of nonfiling is to obtain reliable documentation of income or lack thereof. USCIS is not charged with assessing whether an applicant or a household member had a valid reason for not filing a federal tax return, and USCIS should not use fee waiver adjudications to do so.	USCIS added the questions in response to public comments on the 60-day notice. USCIS provided advance public notice as required under the APA and as required by the PRA.
106	New Income Questions	Single	Further, the proposed I-912 instructions obviate the need for these questions, by explicitly stating that if an applicant or a household member has not yet filed the current year's tax return, they should submit tax transcripts for the most recent tax year. If an applicant or a household member wishes to explain why they are unable to provide a tax transcript for the last year—whether because they are not required to do so or because they have filed for an extension—the applicant can include such information in the "Additional Information" section of the form or a supporting declaration.	USCIS believes that the questions are appropriate even though the evidence could indicate the answers.
107	New Income Questions	Single	Moreover, these are new questions that were not included in the changes that USCIS posted initially on its docket. USCIS has included them now without any comment or explanation. Thus, practitioners and advocates have not been adequately notified and have not had an opportunity to raise concerns directly to USCIS.56 In addition, to the extent that USCIS may contemplate using responses to these questions to determine (in regard to the applicant's concurrent filing for immigration benefits or any subsequent applications or petitions) the applicant's good moral character, that potential use of the information does not constitute the "practical utility" that USCIS must demonstrate under the PRA.	USCIS added the questions in response to public comments on the 60-day notice. USCIS provided advance public notice as required under the APA and as required by the PRA.
108	New Income Questions	Single	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.	Form I-912 provides space for explanations to answers to be written.
109	Masked IRS transcript	Single	The IRS further states that the new "masked" transcripts have been "socialized with all [their] stakeholders, including the banking industry, that require income verification for non-tax related purposes," but the Proposed I-912 Revisions do not provide any indication as to whether USCIS will accept the "masked" transcripts as valid proof of income demonstrating inability to pay.	USCIS currently accepts "masked" tax transcripts as evidence for Fee Waiver Requests filed under the inability to pay criteria Income at or below 150% of Federal Poverty Guideline. As part of the I-912 Revision, USCIS will continue to accept the "masked" transcripts as valid proof of income demonstrating inability to pay.
110	VAWA/T/U-Obtaining Tax transcripts	Attributed to Many	Although the instructions state that VAWA, U, and T applicants who, "due to [their] victimization," do not have any income or cannot provide proof of income, would be able to substantiate their inability to pay with other types of supporting documentation, this carve-out is not sufficiently robust to ensure that survivors can effectively demonstrate their eligibility for fee waivers. Specifically, as discussed in detail below, VAWA, U, and T applicants' inability to provide proof of income or lack thereof in many cases is not "due to [their] victimization," but rather due to the same conditions and vulnerabilities that led to their victimization in the first place.	Although not required by statute, USCIS retained flexibilities for the VAWA, T, and U population to submit any relevant evidence of income with their request if they are unable to provide the required evidence listed on the form due to their victimization or if requesting such evidence would trigger further abuse or endanger the individual.
111	VAWA/T/U-Obtaining Tax transcripts	Attributed to Many	For instance, while it is unclear what will be required to show that the lack of documentation normally required under the proposed fee waiver form is not available due to applicant's victimization, we anticipate this would require at least a declaration from the applicant. Presumably, this declaration will require the applicant to explain the circumstances of their abuse or victimization. Not only is this going to be extra work for an advocate and the applicant, but it will also force the applicant to have to again relive traumatic experiences, simply to be able to seek a fee waiver.	To obtain a fee waiver, an applicant must demonstrate that he or she is unable to pay the fee based on the criteria, and should provide the information and evidence in order to establish eligibility. The applicant need only provide sufficient information to establish why the documentation is not available. The form provides space for explanations and attachments are accepted, but a separate declaration is unnecessary.
112	VAWA/T/U-Obtaining Tax transcripts	Single	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 Congress created for survivors like VAWA self-petitions, U visas and T visas.... The [Fee Waiver] 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." Thus, under current guidance, an affidavit or declaration under penalty of perjury should be sufficient to demonstrate eligibility for a fee waiver.	The new policy provides that VAWA, T or U applicants may submit other types of evidence, such as affidavits from religious institutions, non-profits, and other community-based organizations.
113	VAWA/T/U-Obtaining Tax transcripts	Attributed to Many	It appears that the instructions would still require IRS tax transcripts for VAWA, U, and T applicants' household members, including those who may be eligible for immigration benefits as derivative beneficiaries. Further, if the applicant is a child and is listed as a dependent in another individual's tax return, the applicant would be required to submit that individual's tax transcript. For all of these reasons, many VAWA, U, and T applicants would be subject to the new requirements mandating the submission of IRS tax documentation.	All applicants for a fee waiver are subject to the evidence requirements as provided in the revised form instructions, which include more flexible rules with respect to the groups this comment mentions. If individuals are unable to obtain documents due to their victimization or to avoid triggering additional abuse, they can explain why they are unable to obtain such documentation and submit other evidence to demonstrate their inability to pay.
114	VAWA/T/U-Obtaining Tax transcripts	Single	Although applicants can use the IRS website to obtain these documents, they must first provide several pieces of information to confirm their identity—specifically, their personal account number from a credit card, mortgage, home equity loan, home equity line of credit, or car loan. For VAWA, U, and T applicants whose abusers control their finances and their access to important documents, such applicants may be unable to successfully confirm their identity on the IRS website.	Specific provisions have been added to the I-912 Form and Instructions to account for such circumstances. Such applicants should explain why evidence could not be provided when they submit the fee waiver request and provide other evidence of their inability to pay.
115	VAWA/T/U-Obtaining Tax transcripts	Single	Alternatively, applicants can use the IRS website to request that documents be sent by mail—and for this type of request they are only required to provide their SSN or ITIN, their date of birth, and the mailing address from their latest tax return—but this option only allows applicants to obtain certain types of tax transcripts and applicants cannot use this process to obtain verifications of nonfiling; the expected processing time is 5 to 10 calendar days.	Applicants will need to consider the time and effort required to submit a fee waiver request when planning their application for immigration benefits.

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116	VAWA/T/U-Obtaining Tax transcripts	Single	Many VAWA, U, and T applicants have had a change of address because they have had to flee to domestic violence shelters, while others have been compelled to move frequently due to lack of access to stable housing. They may be fearful that IRS documents might be mailed to an abuser—either because they are currently cohabitating or because the last address on file with the IRS is the abuser's address...	Applicants will need to consider the time and effort required to submit a fee waiver request when planning their application for immigration benefits.
117	VAWA/T/U-Obtaining Tax transcripts	Single	Victims of identity theft also face particular challenges in obtaining IRS tax transcripts or verifications of nonfiling... committed by the abusive spouse or partner as part of a broader pattern of power and control. Victims of identity theft have to take additional steps, following the IRS's specific instructions, to request a transcript	Applicants will need to consider the time and effort required to submit a fee waiver request when planning their application for immigration benefits.
118	VAWA/T/U-Obtaining Tax transcripts	Single	USCIS altered its proposal by appearing to relax the standard regarding the level of documentation that would be required of immigrant survivors in order to pursue a fee waiver. However, this relaxed standard would only be available if the survivor can demonstrate with "sufficient detail" that the lack of income or the inability to obtain documentation is "due to their victimization." And USCIS fails to articulate what this new standard is or how it would be met, or whether it applies to applicants' household members as well.	USCIS understands the concerns, but USCIS believes that the form instructions are clear and provide sufficient accommodations for these groups. Although not required by statute, USCIS retained flexibilities for the VAWA, T, and U population to submit any relevant evidence of income with their request if they are unable to provide the required evidence listed on the form due to their victimization or if requesting such evidence would trigger further abuse or endanger the individual.
119	VAWA/T/U-Obtaining Tax transcripts	Single	Though survivors may not need to include income of an abuser, survivors may still need to obtain tax transcripts from other household members, including adult children or other family members which can be time-consuming and an arduous process.	The instructions have been revised to retain flexibility for victim applicants. They now state, "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 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. Additionally, provide any available documentation of your income, such as pay stubs or affidavits from religious institutions, non-profits, or other community-based organizations verifying that you are currently receiving some benefit or support from that entity and attesting to your financial situation."
120	VAWA/T/U-Obtaining Tax transcripts	Single	The Form I-912 Instructions lists nine different scenarios which may impact what type of documentation should be provided to demonstrate annual income....{Number 8} 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.... 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 to 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.	The revised form provides more flexible requirements for VAWA, T, and U applicants for a fee waiver. In addition, the instructions have been revised to state, "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 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. Additionally, provide any available documentation of your income, such as pay stubs or affidavits from religious institutions, non-profits, or other community-based organizations verifying that you are currently receiving some benefit or support from that entity and attesting to your financial situation."
121	Damage US Economy		If the 7.5 million LPRs eligible to naturalize as of 2012 had become U.S. citizens, they would have contributed an additional estimated $37-52 billion to the national gross domestic product over the course of their first ten years as Americans, according to research by the Center for the Study of Immigrant Integration at the University of Southern California. In contrast, when eligible people who otherwise would seek citizenship decline to request naturalization, we lose out on millions - likely billions - of dollars in economic activity. A proposal like the present one that would likely inhibit tens of thousands of LPRs each year from seeking citizenship would cost the United States dearly.	While there is no way to accurately estimate the impacts of this policy change on filings, USCIS does not believe that its changes to fee waiver policies will result in fewer applications for naturalization.
122	Increase Out-of-Status	Single	a core function of USCIS — to afford lawful status to immigrants who qualify for such status under visa classifications established by Congress — will also be severely jeopardized. The denial of fee waivers for qualified applicants would result in an increase in the number of immigrants who are out-of-status in the United States, in direct opposition to this administration's efforts to promote legal immigration.	Alien would still be eligible for their immigration benefits and would be able to file the forms related to their immigration benefit request with the fees or establish eligibility under the 150 percent of the FPG category or financial hardship.
123	Financial Hardship	Single	HILSC staff members' experiences with requesting fee waivers based on financial hardship for eligible clients indicates that these waivers are very rarely granted, even in situations with extreme and/or well-documented financial hardship. In practice, attorneys know that given the difficulties of getting these fee waivers approved, there are currently only two methods of obtaining a fee waiver; the elimination of the means-tested benefit option will, for all practical purposes, limit this to one method.	Aliens would still be able to establish eligibility under two criteria - income at or below 150 percent of the FPG or financial hardship. The form instructions provide information of what documentation must be subjected in order to establish financial hardship.
124	Reduce FWR/Increase Income Revenue	Attributed to Many	USCIS has an interest in seeing the number of fee waivers granted reduced. The agency is supported by fee revenues (over 95% of its budget) and would make more money if it granted fewer fee waivers...USCIS has not provided any data about what percentage of fee-waivers are granted based on each of the three criteria; however, it is our experience that the majority of their fee waivers are granted on means-tested benefits and that proving economic hardship to USCIS is increasingly harder to do and results in denials to deserving clients.	One study that USCIS conducted in 2017, indicated that 71.9 percent of the fee waiver receipts were approved based on receipt of means-tested benefits, and 26.9 percent based on household income below 150% of the FPG.
125	American Dream/Values	Attributed to Many	Commenters responded that the proposed changes do not align with American values and will make it hard to achieve the American Dream.	This form change does not prevent aliens from filing fee waiver requests or from obtaining immigration benefits or achieving the American Dream. Applicants are still eligible to request a fee waiver and are able to obtain their immigration benefits as provided under the law.

EXHIBIT H

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1	General Responses to Public Comments			
2	Federal Register Notice, "Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions." 84 FR 26137 (June 5, 2019).			
3	30-Day Public Comment Period (6/5/19-7/5/19)			
4	Category	Comments Single/ Multiple	Comments	30 Day Responses
5	Alien burden	Attributed to Many	Commenters responded that by eliminating receipt of a means-tested benefit to show eligibility, the government is adding an additional burden on immigrants who already are facing the economic challenge of paying for application fees. The proposed changes will place an additional burder on individuals to complete the fee waiver form and obtain more supporting documentation.	USCIS understands that this change will require people to obtain different documentation than they previously would have to establish eligibility for a fee waiver. USCIS agrees that the burden will increase. but still does not believe that the burden that will be imposed by the revised form will be excessive for a requestor to receive the free adjudication of his or her's immigration benefit request. USCIS is 96% funded by fees and we must charge fees to cover our costs. Upon review of the comments, USCIS analyzed the current estimated time burden per response data and has made a modification. The new estimated time burden per response is 2 hours and 20 minutes. The additional burden for obtaining tax transcripts was considered in our decision to move forward with this change.
6	CBO and Legal Service Burden	Attributed to Many	Fee waiver preparation for low-income immigrants demands hours of work from legal services providers. The fee waiver based on receipt of a means-tested benefit is efficient in that the provider knows which document will be sufficiently probative for USCIS. The other grounds for a fee waiver, financial hardship and a threshold of the poverty income guidelines, are much less clear, and require far more time to gather sufficient documentation.	USCIS understands that the proposed changes will require people to obtain different documentation than they previously would have to establish eligibility for a fee waiver. Therefore, USCIS is providing significant advance notice of the change to permit any person or entity who may be affected by the change with sufficient time to conform to the new policy and practice. This should provide nonprofit community organizations and legal service providers an appropriate amount of time to revise any training or resource material for staff or applicants, as well as methods for advising applicants of the requirements for fee waiver eligibility. Although the means-tested benefits criteria is being abrogated from the current three options to establish fee waiver eligibility, applicants would still be eligible to file for fee waivers under the current criteria of having income at or below 150 percent of the Federal Poverty Guidelines, or having suffered a financial hardship. Thus, staff and volunteers at nonprofit community organizations should already be familiar with the remaining criteria for fee waiver eligibility. DHS has considered the burden on applicants and those that provide them aid and determined that the benefits of the policy change exceed the potential small burden increase.
7	CBO and Legal Service Burden	Attributed to Many	With the proposed changes to the fee waiver form, it will become harder or even impossible for non-profit legal service providers to complete applications in the workshop setting. Organizations may stop providing assistance with fee waivers in the workshop setting. This would cut off access to legal support and immigration relief for vulnerable populations, particularly for those in remote or other hard-to-reach areas.	USCIS appreciates that some non-profit agencies provide assistance for aliens filling out fee waiver requests and does not believe that such services would be extraordinarily impacted by the changes to the I-912. However, immigration laws, policy and forms are ever changing and both applicants and organizations have previously adapted to the changes. Further, the changes within this form would not result in every applicant being denied a fee waiver as the person could still apply under the other two criteria: income under 150% of the FPG or financial hardship.
8	Eliminating means-tested benefits	Attributed to Many	Receipt of a means-tested benefit is sufficient evidence of inability to pay, which is what 8 C.F.R. § 103.7(c) requires.	As stated in the Federal Register Notice, USCIS 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. 83 FR 49120 (Sept. 28, 2018). To increase the consistency in the shifting of the cost of fee waivers to those who pay fees, USCIS has decided to apply more consistent standards of income and financial hardship for the purposes of determining inability to pay a fee.
9	Eliminating means-tested benefits	Attributed to Many	USCIS is taking the indefensible position that it cannot tell which public benefit programs are means-tested and which ones are not. Given that the largest means-tested programs are federal program such as Medicaid or SNAP, this assertion is plainly a pretense for an action that has no real basis in fact.	The fact is that USCIS fee waiver volumes, most approved using the means tested benefit criterion, have continued to increase substantially. Thus, regardless of if a benefit is Federally funded or implemented by states, the use of means tested benefits as equal to the inability to pay a USCIS fee has resulted in continued growth of fee waivers - growth at much higher rates than the numbers of people receiving such benefits. This inconsistent trend indicates that there is a problem with using such benefits as a short cut for providing waivers. Thus USCIS will require that requests for a fee waiver provide proof of income.
10	Eliminating means-tested benefits	Attributed to Many	Contrary to what Congress intended, the proposed revisions to eliminate an individual's ability to use proof of receipt of means-tested public benefits to demonstrate inability to pay the prescribed fee will exacerbate the barriers that immigrant survivors already face when coming forward to access protection.	Although USCIS is removing the criteria based on the means-tested benefit, fee waivers are still available to low income applicants.
11	Eliminating means-tested benefits	Attributed to Many	USCIS indicates that an "applicant who receives a means-tested benefit must generally provide evidence of income to the relevant agency. Therefore, applicants who receive a means tested benefit should have income documentation readily available to provide to USCIS." USCIS posits this to conclude that the additional burden for individuals to provide copies of income tax documentation instead of an award letter from a means tested benefit agency in order to qualify for fee waivers will cause minimal additional burden. However, individuals may have provided acceptable forms of proof other than income tax documentation when applying for and receiving means-tested benefits, such as a letter from an employer showing income and number of hours worked.	To make the eligibility requirement consistent, USCIS is removing the means-tested benefit receipt as a criteria for filing a fee waiver request. USCIS' determination of the inability to pay the fee for a request is distinct from that of other public benefit granting agencies, which may include a person's income. In addition, many applicants have requested a fee waiver based on the receipt of public benefits that are not means tested. This requires USCIS to review the public benefit requirements to determine whether it is a means-tested benefit and would be acceptable under the USCIS criteria. Means-tested benefits have a wide variety of eligibility requirements and income thresholds between states which includes incomes above the 150% of the Federal Poverty Guidelines which USCIS uses for other fee waiver eligibility. Removing means-tested benefits as making an applicant eligible for a fee waiver will reduce the burden on USCIS and permit us to devote some resources to benefit adjudication now being used for fee waivers. Applicants may still request a fee waiver using the income or financial hardship criteria.
12	Eliminating means-tested benefits	Attributed to Many	Contrary to USCIS' assertions, 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, as receipt of a means-tested benefit is an accurate, valid and reliable method to demonstrate financial hardship.	USCIS will continue to grant fee waivers, and shift the costs of fee-waived applications, petitions, and requests to other benefit-seeking applicants and petitioners. USCIS agrees that applicants with a household income greater than 150 percent of the federal Poverty guidelines who may have nonetheless been approved for a means tested benefit in their home state, will no longer be eligible for a fee waiver under this changed policy, unless they suffer a financial hardship. Regardless of this impact, USCIS has decided to standardize eligibility for fee waivers and that applicants who pay fees should not pay higher fees so that families who have received means tested benefits, but who have incomes considerably above the poverty level and have not suffered a financial hardship, can receive free immigration benefits. Applicants who cannot afford, or claim they cannot afford, a fee could still apply for a fee waiver and may still qualify.
13	Eliminating means-tested benefits	Attributed to Many	Means-tested benefits proof is by far the most common and straightforward way to demonstrate fee waiver eligibility as applicants have already proven current receipt of benefits by providing a copy of the official eligibility letter, or Notice of Action, from the government agency administering the benefit.	USCIS has found the use of means-tested benefit award letters to be a problem, and we have decided to change our policy.

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14	Eliminating means-tested benefits	Attributed to Many	USCIS has failed to demonstrate that the elimination of means-tested benefits has practical utility or is necessary for the proper performance of the agency's functions. In its responses to comments. USCIS has asserted that its goal is to "simplify fee waiver requests, and improve quality and consistency of fee waiver adjudications," yet the elimination of means-tested benefits will achieve the opposite.	USCIS agrees that eliminating the use of an means-tested benefit for approving fee waivers appears to make it more complicated: however. keeping up on what benefits are means tested has been a challenge and inconsistent in its application because different benefts have different thresholds. By basing fee waivers on income, waivers will be granted more consistently.
15	Eliminating means-tested benefits	Single	The agency's April 5 Notice admirably stated that it would "reduce the evidence required for a fee waiver[.]" 84 Fed. Reg. 13687. But now, the agency says that a repeal of the means-tested benefit rule will "curtail[] the rising costs of fee waivers" by allowing the agency to deny more of them. 84 Fed. Reg. 26139 (explaining that "without changes to fee waiver policy [USCIS] will continue to forgo increasing amounts of revenue as more fees are waived."). Those two statements cannot both be right, and we ask that USCIS clarify whether it intends to make it easier or harder for an applicant to obtain a waiver. In fact, the Administrative Procedure Act requires agencies to reconcile conflicting concerns before taking action. If there is "a significant mismatch between" the agency's "decision" and its "rationale," the Courts will set aside the agency's action and remand for further consideration. Dep't of Commerce v. New York, No. 18- 966, slip op. at 26-27 (S. Ct. June 27, 2019); Am. Radio Relay League, Inc. v. Fed. Commcn's Comm., 524 F.3d 227, 240 (D.C. Cir. 2008). USCIS's Notice presents just that type of mismatch.	The statements are not mutually exclusive and not inconsistent, because USCIS may be motivated both by reducing the complexity of fee waiver reviews its officers must undertake, and by reducing the amount of fee revenue that is being foregone by waiving increasing numbers of fees. This policy does both. In the April notice, USCIS meant that we were reducing the evidence by reducing the number of methods that could be used to obtain a fee waiver from three to two, not that we were reducing the aggregate amount that would be required. We apologize for any convenience on that point. The commenter's point about the multiple reasons for the policy change is why USCIS published a second 30-day notice. We wanted to make it clear to the interested public that we had fully analyzed the reasons or and effects of this change and request public comments thereon.
16	I-912 Mandatory/No Letter Option	Attributed to Many	Eliminating this currently accepted form of request places an additional and unnecessary hardship on survivors to locate, complete, and submit the Form I-912, when a self-generated request that provides all of the necessary information can equally meet the requirements. For pro se survivors, for survivors with limited English proficiency, as well as for service providers that work with a high-volume caseload, the requirement of the I-912 is an unnecessary burden. The I-912 form itself is a complex form, with multiple pages of instructions. It is often easier for survivors and those who serve them to use applicant-generated fee requests to show an applicant's income, expenses and the reasons the applicant or petitioner is unable to pay the immigration fees. Moreover, these applicant-generated forms of proof comport with the requirements of 8 CFR 103.7(c).	Adjudicating ad hoc fee waiver requests has proven to be difficult due to the varied quality and information provided in ad hoc letter requests. Form I-912 is easy to complete, and it provides standardization that will assist USCIS in our review of requests.
17	IEFA Fee/Fee Calculation	Attributed to Many	USCIS also does not propose to lower the fee for naturalization and other applications based on the Proposed Change. USCIS offers no analysis of the reduced fees it might be able to provide. In assessing the burden of further information collection and review, USCIS should not take into account potential savings or reduced cost-shifting achieved by granting fewer waivers by heightening standards or deterring qualified applicants from requesting a fee wavier-or applying for citizenship at all-due to the increased burden of providing supporting information.	The effects of this change are unknown at this point, although USCIS expects its revenue losses from fee waivers to decrease over time. DHS will consider the actual fiscal impacts of this change in the next comprehensive review of costs and revenue when it considers adjusting USCIS fees as required by the CFO Act. As the commenter indicates, the actual results could have an effect on fee levels, once that effect is known. USCIS fees, however, do not need to be adjusted concomitant with this or any other policy change that may affect revenue or costs.
18	IEFA Fee/Fee Calculation	Attributed to Many	That the agency claims it is not recouping sufficient filing fees goes to the heart of setting the fee rates in the first place, not to the adjudication of fee waiver requests.	INA 286(m) provides that fees may be set a level to recover the costs of providing free services. Therefore the number and amount of fee waivers is a consideration in and not independent of the setting of USCIS fees.
19	IEFA Fee/Fee Calculation	Single	Notably, the higher the filing fees, the greater the demand for fee waivers, as fewer people are able to pay ever increasing filing fees. It goes without saying that if filing fees were more affordable, more people would be paying them in full or seeking fee reductions rather than fee waivers!	Thank you for your comment. USCIS is funded by fees and must set fees at a level required to recover its costs of operations.
20	IEFA Fee/Fee Calculation	Attributed to Many	In the notice, USCIS cites to the FY 2016-2017 proposed fee schedule rule as authority. While the authority of a proposed rule is doubtful at best, we note that the overall theme of the cited fee rule was to increase access to citizenship for all income levels, not diminish it, and the references provided in this notice is out of context. In any event, any consideration of the cost of waivers and fees should be taken up during the bi-annual fee schedule review.	The notice did not cite to the 2016 fee rule as an authority. It was cited as a source that may providing a background or explanation, including volumes and trends in fee waivers granted. It also stated that USCIS would be examining its fee waiver policies in the future.
21	IEFA Fee/Fee Calculation	Attributed to Many	Unless or until the agency proposes to alter the Code of Federal Regulations, USCIS is bound to waive fees for as many applicants as are able to demonstrate their inability to pay fees associated with the application types listed at 8 C.F.R. § 103.7(c)(3-4). Should the granting of fee waivers for which eligibility is proven cause any strain on USCIS's budget, the law provides that, "fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services [and...] any additional costs associated with the administration of the fees collected," 8 U.S.C. § 1356(m). The process of setting fees for immigration services is governed by USCIS regulations, the APA rulemaking process, and other agency guidelines that set forth the specific criteria and procedures for the process.	USCIS disagrees that this change may limit fee waiver eligibility. USCIS provided the option of providing a fee waiver to an applicant who received a means tested benefit as a short cut method of documenting low income but it was never intended to loosen the agency's interpretation of unable to pay under its fee waiver regulations at 8 CFR 103.7(c); however, as the commenter implies, that method of demonstrating eligibility for a waiver may have made fee waivers excessively obtainable, resulting in huge costs to USCIS. USCIS is not intending with this form change to severely restrict fee waivers for those who are unable to pay and we think applicants who are truly destitute will be able to have their fees waived using the revised form. The effects of this change are unknown at this point, although USCIS expects its revenue losses from fee waivers to decrease over time. DHS will consider the actual fiscal impacts of this change in the next comprehensive review of costs and revenue when it considers adjusting USCIS fees as required by the CFO Act. As the commenter indicates, the actual results could have an effect on fee levels, once that effect is known. USCIS fees, however, do not need to be adjusted concomitant with this or any other policy change that may affect revenue or costs.

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22	IEFA Fee/Fee Calculation	Attributed to Many	Moreover, the new rationale proposed in USCIS's June 5, 2019 publication – reducing the number of fee waivers approved – is simply inappropriate for a review of an information collection under the PRA. An effort to raise more funds does not permit USCIS to impose onerous bureaucratic requirements on applicants for services, nor to arbitrarily approve and deny requests from people of similar practical means. The agency may address the cost of and qualifications for fee waivers in its biannual fee schedule review or by proposing other changes to the Code of Federal Regulations through rulemaking subject to the Administrative Procedure Act (APA). However, it must make decisions about information collection using the Request for Fee Waiver Form I-912 according to the efficiency considerations set forth in the PRA.	USCIS realizes that the change to the information accepted for a fee waiver is a policy change regarding the interpretation of "unable to pay" as provided in 8 CFR 103.7(c). Thus the change. as well as the original policy. are effective as an interpretive rule. USCIS may rescind an interpretive rule using the same method as it used to issue the interpretation that is being rescinded. *See Perez v. Mortgage Bankers Ass'n* , 135 S.Ct. 1199 (2015). In this case, USCIS used and is using the form instructions, public notice, and the 0MB approval requirements of the PRA to effectuate the original policy and this change. An agency can change its interpretation of a regulation at different times in its history if the interpretative changes create no unfair surprise. *Long Island Care atHome Ltd. v. Coke* , 551 U.S. 158, 171 (2007) (holding that *Seminole Rock* and *Auer* deference is inapplicable when there is a strong potential for unfair surprise). See, also, *Christopher v. SmithKline Beecham Corp.* , 567 U.S. 142 (2012). USCIS has published three Federal Register notices requesting public comment on these proposed changes as required by regulations at 5 CFR 1320.8(d)(1) (83 FR 49120) and 5 CFR 1320.10(a) (84 FR 13687), plus an additional notice to clarify the nature of the proposed policy changes. 84 FR 23167 (June 5, 2019). Thus, the affected public will not be surprised by this change, and USCIS is permitted under applicable law and regulation to make it.
23	IEFA Fee/Fee Calculation	Attributed to Many	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.	USCIS appreciates that paying for an immigration benefit request is an expense to be borne by immigrants along with other living and household expenses, and whether to devote limited income to USCIS fees or buying an automobile, for example, must be considered. Nevertheless, Congress has established that USCIS will be operated using fees to be charged for its services, and we assume that the concerns expressed by the commenter of delay, income, and affordability were considered when the legislation was enacted.
24	Limits natz/benefit	Attributed to Many	The proposed rule would cut off access to citizenship for hundreds of thousands of eligible immigrants who apply for a fee waiver due to the high cost of application fees.	Although the means-tested benefit criteria is being removed, applicants would still be eligible for file under the criteria of having income at or below 150 percent of the Federal Poverty Guidelines, or having a financial hardship. USCIS does not believe the changes are an excessive burden on respondents.
25	Limits natz/benefit	Attributed to Many	The cost of applying is one of the main barriers to immigrants applying for naturalization.	This change is in no way intended as a barrier to citizenship or any other immigration program, benefit, or request, especially for low income aliens. As stated in the Federal Register Notice, USCIS 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. 83 FR 49120 (Sept. 28, 2018). To increase the consistency in the shifting of the cost of fee waivers to those who pay fees, USCIS has decided to apply more consistent standards of income and financial hardship for the purposes of determining inability to pay a fee.
26	Limits natz/benefit	Single	USCIS continues to maintain the agency is also trying to make the process more consistent and efficient, with the current notice USCIS' primary motivation is clear: denying access to immigration benefits and naturalization for vulnerable populations under the guise of recouping revenues for services to those who cannot afford them and need fee waivers.	USCIS does not agree with the commenter that removing the means tested benefit criterion for receiving a fee waiver equates to reducing access to immigration benefits or naturalization. The immigration statutes do not specifically provide for free naturalization services, but requires USCIS to obtain its funding through fees. The means tested benefit policy has only been in effect since 2011 and low income people had fee waiver before the policy went into effect. Applicants can submit tax returns under the new policy, use a credit card, or save the money for the fee. If a person needs a means tested benefit, they need the benefit and they are not obtaining it to receive free services or apply for naturalization. Thus we are not denying them access by reversing that policy.
27	Limits natz/benefit	Attributed to Many	Preventing individuals from accessing the fee waiver through use of public benefits would discourage eligible immigrants from becoming citizens based on their wealth and class status.	USCIS disagrees that removing the means tested benefit criterion will cause fewer eligible immigrants to become citizens. A fee waiver is not required to apply for naturalization and individuals would still be eligible for fee waivers as previously discussed.
28	Limits natz/benefit	Attributed to Many	The proposed change will prevent people from becoming voters.	The change in policy is not expected to reduce the average annual number of Applications for Naturalization or prevent people from becoming voters.
29	One Form Per Person	Attributed to Many	USCIS says the change would apply to fewer than ten percent of fee waiver requests, based on past experience. It is inconceivable that the agency construes this as no great burden, when the figure it cites equates to more work for tens of thousands of applicants annually.	The changes will not increase the burden on USCIS' review of fee waiver requests. The burden may increase for households with several members, but USCIS has found that over 90 percent of Form I-912 filings were filed for one person on one form. The change will reduce the number of fee waiver requests that are rejected. We think these benefits exceed the small increase in burden that this change may add.
30	Other Federal, State and Local Agency Burden	Attributed to Many	The proposed fee waiver application procedures would impose significant burdens on government agencies outside the USCIS. It would increase the workloads of employees processing requests for tax transcripts and letters affirming non-obligation to file taxes, and their counterparts at other agencies that distribute or keep data about sources of income. USCIS's proposal would newly require most or all fee waiver applicants to submit documents from the IRS, adding additional costs and burden on the IRS to fulfill requests. By effectively requiring many prospective applicants to seek more extensive original records of circumstances affecting income, USCIS is likely to make more work for government agencies in [my state], and for entities such as the Social Security Administration and the Federal Emergency Management Administration.	As part of its regular operations, the Internal Revenue Service (IRS) provides customer service including providing tax transcripts. Tax transcripts can be obtained by calling the IRS or submitting a request online, through the mail or by fax. As the IRS, and other Federal, State, and Local Agencies regularly provide information and services to their customers as part of their daily operations, the proposed form changes should have a minimal impact on them.
31	Other Federal, State and Local Agency Burden	Attributed to Many	State and local governments are also likely to take on more costs and burden if USCIS makes the fee waiver application process more complicated, and fewer people are able or willing to seek citizenship and other immigration benefits. Access to immigration status and naturalization provide vital protection and security, help stabilize families, and create more integrated, harmonious communities. Added barriers to immigration benefits will tend to force states and municipalities to divert resources to provide support to low income populations, or to create funds to ensure that low income people and families receive immigration benefits	USCIS disagrees with the commenter's suggestions of a tenuous connection between this policy change and the need for social services from states, because USCIS does not believe the policy change will result in a decrease in the number of people applying for naturalization.

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32	Public Comment Notice	Attributed to Many	The Proposed I-912 Revisions are a significant and substantive change in the fee waiver standards disguised as a form revision. Changes to official USCIS standards regarding fee waivers must be done in accordance with the Administrative Procedure Act ("APA"), Pub. L. 79–404, 60 Stat. 237, and follow the required process and procedure. The PRA process does not substitute for APA notice-and-comment rulemaking.	DHS is aware that if an agency adopts a new position inconsistent with an existing regulation, or effects a substantive change in the regulation. notice and comment are required under the Administrative Procedure Act (APA). 5 U.S.C.A. § 553(b)(3)(A). However, the form and instructions for USCIS Form I-912 only provide the USCIS interpretation of the inability to pay as provided in 8 CFR 103.7(c) and the procedures for requesting a fee waiver. Therefore, Form I-912 and its instructions are an interpretive rule and procedural rule. An agency may issue a new interpretation of a regulation that deviates significantly from the agency's previous interpretation without following the APA's rulemaking provisions. See Perez v. Mortgage Bankers Ass'n, 135 S.Ct. 1199 (2015). In addition, the APA procedural-rules exception provides that agency may change the procedures for applying standards without engaging in notice and comment rulemaking. See James v. Hurson Associates, Inc. v. Glickman, 229 F.3d 277 (D.C. Cir. 2000). That a rule adds burden to the affected regulated public does not mean it is not a procedural rule. Id. Thus USCIS is not required to use the APA's notice-and-comment procedures to amend or repeal an interpretive or procedural rule, such as its fee waiver policy and Form I-912. In Perez the Supreme Court also held that, although an agency can change its interpretation of a regulation at different times in its history, the interpretative changes can create no unfair surprise. See Perez, 135 S.Ct. at 1208, fn. 2; see also Long Island Care at Home Ltd. v. Coke, 551 U.S. 158, 171 (2007) (holding that Seminole Rock and Auer deference is inapplicable when there is a strong potential for unfair surprise); Christopher v. SmithKline Beecham Corp., 567 U.S. 142 (2012). Accordingly, USCIS acknowledges that individuals who may have planned to file a request or a waiver may argue that changing a multi-year practice of accepting a means tested benefit as proof of inability to pay is a binding regulation. However, fee waivers are an exercise by DHS of the discretionary authority provided in INA section 286(m), 8 U.S.C.1356(m) to provide certain services for free, and the regulations codified under that authority at 8 CFR 103.7(c) provide that fee waivers are at the discretion of USCIS. Commenters on this form change also have not identified any action that they may have taken to their detriment in reliance on USCIS continuing its current policy. To the contrary, if an individual chooses to apply for and is granted a means tested benefit, it will be because they need the benefit and not because they wanted to use proof of such a benefit to obtain a USCIS fee waiver request. Stated more directly, an applicant for a USCIS immigration benefit would not seek to temporarily obtain means tested benefits simply so they could use the award letter to attach to their Form I-912 requesting that their USCIS fee be waived. Thus removing that requirement should not be detrimental
33	Public Comment Notice	Attributed to Many	The notice also stated that if USCIS finalized this change, it would eliminate the current USCIS Fee Waiver Guidance and replace it. No new proposed guidance was published for public comment....Thus far, unlike during consideration of the 2011 Fee Waiver Policy Memo, stakeholders have not yet been informed of any public engagements whereby feedback can be provided directly to USCIS regarding the prospective changes to the policy memorandum. We would appreciate such an opportunity to provide our educated feedback on whatever changes to the policy memorandum are being considered.	The USCIS policy manual is internal guidance for USCIS officers to use in administering programs, and it is not subject to public review and comment under the Paperwork Reduction Act or the Administrative Procedure Act. As for fee waivers and the Form I-912, the policy manual changes will be consistent with, and not more extensive than, the changes to the form instructions posted for comment. Thus the commenter has access to the policy change on which to comment.
34	Regulation Change	Attributed to Many	Agencies must "examine the relevant data and articulate a satisfactory explanation for its action, including a rational connection between the facts found and the choice made." State Farm, 463 U.S. at 43.	USCIS has explained its rational basis for making this change in the three Federal Register Notices and in its responses to the public comments received.
35	Regulation Change	Attributed to Many	Cost to the agency is not a lawful factor to consider, and thus it cannot be part of the agency's analysis. E.g., Robbins v. Reagan, 780 F.2d 37, 48 (D.C. Cir. 1985) (agency's decision is procedurally invalid if based on "impermissible or irrelevant factors," particularly when the agency makes a "change in direction from a previously announced intention"); see also State Farm, 463 U.S. at 43 (the agency must consider "the relevant factors" and errs if it "relied on factors which Congress has not intended it to consider") (emphasis added).	USCIS has explained its rational basis for making this change in the three Federal Register Notices and in its responses to the public comments received.
36	Regulation Change	Attributed to Many	Rulemaking is invalid under the Administrative Procedure Act if the agency "entirely failed to consider an important aspect of the problem."	This change is not a rulemaking and USCIS has considered all aspects of the problem as explained in the notices, the supporting statement, and our responses to public comments.
37	Regulation Change	Attributed to Many	The PRA obligates federal agencies to minimize burden and increase the utility of data collection from members of the public; current procedures that honor previous agency adjudications of financial need bring efficiency to fee waiver adjudication.	The additional burden imposed by this change was considered and they have been overridden by practical considerations of expenses, costs, and revenue.
38	Regulation Change	Attributed to Many	Here, however, much more than a form or collection of information is involved, and the use of streamlined PRA process is inappropriate. The changes proposed here are not information collection. Instead, they go to the heart of a substantive eligibility requirement. The proposed changes to the fee waiver eligibility criteria and accepted forms of evidence represent a fundamental change in the law that is being finalized without sufficient public notice and comment.	USCIS realizes that the change to the information accepted for a fee waiver is a policy change regarding the interpretation of "unable to pay" as provided in 8 CFR 103.7(c). Thus the change, as well as the original policy, are effective as an interpretive rule. USCIS may rescind an interpretive rule using the same method as it used to issue the interpretation that is being rescinded. *See Perez v. Mortgage Bankers Ass'n*, 135 S.Ct. 1199 (2015). In this case, USCIS used and is using the form instructions, public notice, and the OMB approval requirements of the PRA to effectuate the original policy and this change. An agency can change its interpretation of a regulation at different times in its history if the interpretative changes create no unfair surprise. *Long Island Care at Home Ltd. v. Coke*, 551 U.S. 158, 171 (2007) (holding that *Seminole Rock* and *Auer* deference is inapplicable when there is a strong potential for unfair surprise). See, also, *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142 (2012). USCIS has published three Federal Register notices requesting public comment on these proposed changes as required by regulations at 5 CFR 1320.8(d)(1) (83 FR 49120) and 5 CFR 1320.10(a) (84 FR 13687), plus an additional notice to clarify the nature of the proposed policy changes. 84 FR 23167 (June 5, 2019). Thus, the affected public will not be surprised by this change, and USCIS is permitted under applicable law and regulation to make it.

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39	Requiring IRS transcripts	Attributed to Many	Currently, applicants can submit a copy of their most recent federal tax returns to meet this requirement. The government does not provide any reason as to why a transcript is preferred over a federal tax return. Federal tax returns are uniform documents and most individuals keep copies on hand.	USCIS currently requests copies of income tax returns from applicants requesting fee waivers. Tax transcripts are easily requested through the Internal Revenue Service (IRS) website or though paper filing and are free to taxpayers. USCIS cannot accept incomplete copies of tax returns or copies that are not signed or submitted to the IRS to support fee waiver requests. Therefore, USCIS believes that requiring transcripts will reduce the number of fee waiver request rejections. In terms of the Non-filing letter from the IRS, USCIS is concerned about not receiving documentation of no-income. Therefore, obtaining information from the IRS in transcripts, a W-2, or proof of non-filing, if applicable, is sufficient documentation to establish the necessary income or no income
40	Requiring IRS transcripts	Attributed to Many	Many of our clients do not have the internet at home or ready access to a computer. In order to request tax transcripts from the IRS, they would need to make a special trip to the IRS office. In contrast, they often have a copy of their tax return already, which provides nearly identical information.	IRS Form 4506-T may be submitted in paper form to the IRS by mail.
41	Requiring IRS transcripts	Attributed to Many	USCIS claims that these individuals should not face additional barriers to pursuing fee waivers because the information they used to seek a means-tested benefit should be "readily available" to provide to USCIS. In our experience, this type of documentation is not in fact "readily available" (nor is it the same as what the proposed form would now require). Further, many of our clients experienced challenges to be able to demonstrate the criteria to qualify for a means-tested benefit in the first place. USCIS is asking them to go through the process again, a burden that is not, as USCIS claims, "minimal."	Income documentation needed for fee waivers would also be needed for establishing eligibility for public benefits which as the commenter indicated the alien would already need to establish with the public benefit granting agencies. The alien would provide the same documentation of income i.e. tax transcripts or W-2 to establish eligibility for the fee waiver.
42	Requiring IRS transcripts	Attributed to Many	The proposed changes make the form more complex and will likely lead to individuals making more mistakes, adding to the processing time of the application and further adding to the deterrent effect of these changes. In some cases, applicants may not be able to complete the form in time to meet required deadlines because of a lack of required documents.	USCIS has acknowledged that the burden of completing the form will increase somewhat, and that applicants must plan for that when preparing their applications as is the case with all form updates.
43	Requiring IRS transcripts	Attributed to Many	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 and their household members already have (e.g. with 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 is aware of and has considered the burden of obtaining tax transcripts versus means tested benefit award letters.
44	Requiring IRS transcripts	Attributed to Many	In addition, many applicants will be unable to get the additional documentation necessary to establish eligibility for a fee waiver if the means-tested-benefit option is eliminated and they may therefore decide to forgo the application in the first place. USCIS appears to acknowledge this when it states that, since "there is no time limit for applying for naturalization," applicants may simply postpone their application and "save funds" to pay for the fee. However, USCIS does not address the variety of deadlines the Immigration and Nationality Act and implementing regulations impose outside the naturalization context. And even in the naturalization context, for many low-income applicants, saving funds is not a realistic possibility and the postponement that USCIS proposes will really mean a denial of access to the naturalization process.	USCIS does not agree with the commenter that removing the means tested benefit criterion for receiving a fee waiver equates to removing access to the naturalization process for thousands of people. Those people can file an affidavit or Verification of Non-filing and would still be eligible for fee waivers.
45	USCIS Burden/backlog /impact	Attributed to Many	The imperative of improved efficiency is particularly strong in 2019 in light of the fact that backlogs of naturalization and other applications awaiting adjudication have been growing since 2016, and have considerably lengthened the waits that immigrants and their American relatives and employers experience for final action. USCIS officers are accustomed to handling simple fee waiver applications based on receipt of means-tested benefits, and would need additional training and time to process larger caseloads of more complex fee waiver applications accompanied by more voluminous documentation.	USCIS believes that the proposed change will reduce its administrative burden for fee waiver processing. USCIS currently requests copies of income tax returns from applicants requesting fee waivers. Tax transcripts are easily requested through the Internal Revenue Service (IRS) website or through paper filing and are free to taxpayers. USCIS is confident that the IRS can handle the additional number of requests for tax transcripts that this change will require. USCIS cannot accept incomplete copies of tax returns or copies that are not signed or submitted to the IRS to support fee waiver requests, because such a lax standard would encourage fraud in the fee waiver process. Therefore, USCIS believes that requiring transcripts will reduce the number of fee waiver request rejections. USCIS believes the change will reduce the number of fee waiver requests that are rejected because of improper documentation, inadequate information and no signatures for household members. We think these benefits exceed the small increase in burden that this change may add.
46	USCIS Burden/backlog /impact	Attributed to Many	There is no need to impose that burden on adjudicators, since the work has already been done for those individuals who are able to apply as recipients of means-tested benefits.	USCIS appreciates the concern for the burden of officers however USCIS has considered the burden on adjudicators and determined the changes are necessary as described above.
47	USCIS Burden/backlog /impact	Attributed to Many	USCIS claims the changes will standardize, streamline, and expedite the process of 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. 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 does not believe the new policy will delay processing or deny access. USCIS would adapt and change its process as necessary to limit any increase in delays. USCIS thinks that this policy change will help reduce backlogs.

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48	Cost of Living	Attributed to Many	Ability to pay isn't the same for two people with the exact same income who live in two different states with totally different costs of living.	Many applicants have requested a fee waiver based on the receipt of public benefits that are not means tested. In addition, means-tested benefits have a wide variety of eligibility requirements and income thresholds between states which includes incomes above the 150% of the Federal Poverty Guidelines. As the eligibility criteria varies by state, there is not a consistent standard for applying the local cost of living into their public benefits determination. This would require USCIS to review all public benefit requirements to determine whether it is a means-tested benefit, how the public benefit granting agency made their calculations, whether they took the local cost of living into consideration, and whether their requirements meet USCIS' determination of the inability to pay. Additionally, the burden and complexity of USCIS staff making their own fee waiver determinations based on calculations using the local cost of living for each applicant would be unsustainable and lead to additional backlogs. Thus, USCIS is standardizing fee waiver eligibility criteria based on income level or financial hardship for both consistency in decisions and to reduce its administrative burden for fee waiver processing.
49	Cost of Living	Attributed to Many	The fact that different jurisdictions make means-tested benefits available at varying income levels does not render means-tested benefits programs an inappropriate measure of financial hardship; instead, it proves that receipt of a means-tested benefit is an apt and accurate measure of ability to pay hundreds or thousands of dollars in immigration fees.	USCIS believes that the continued increase in fee waivers while the economic and incomes continues to grow, and unemployment decreases, coupled with the strong desire of commenters for us to retain the means tested benefit policy, are all indicators that means tested benefits are too easy to obtain for them to be good indicators of true inability to pay a USCIS fee.
50	I-912 Language Options	Attributed to Many	For immigrants with limited resources who may not speak English well, obtaining additional documentation from government agencies can be daunting....The Internal Revenue Service website is accessible only in Chinese, Korean, Spanish, Russian, and Vietnamese at this time. While the USCIS website has resources in more languages, it appears that information about Form I-912, but not the form itself, is available only in Spanish.	USCIS realizes that some applicants may have to obtain the services of an interpreter or translator to request some government services. There is no change regarding these provision in this form change.
51	Eliminating means-tested benefits	Attributed to Many	There are finite federal- and state-run programs offering means-tested benefits. USCIS has not established what percentage of those programs do not have income thresholds that exceed 150% of the Federal Poverty Guidelines. Nonetheless, USCIS could readily determine which benefits do, and do not, have threshold requirements exceeding the 150% level. A summary chart or reference then be prepared for use in reviewing each application for fee waiver, to quickly identify which means-tested benefits are acceptable under USCIS criteria and which require that the applicant's eligibility be re-adjudicated for a hardship waiver.	USCIS appreciates the suggestion, but believes that it would be more difficult than the changes that we are proposing.
52	Analytical Evidence	Attributed to Many	USCIS fails to provide any evidence that accepting proof of receipt of a means-tested benefit has led the agency to grant fee waivers to individuals who were able to pay the fee.	The term in the regulations, "unable to pay," is inherently subject to interpretation, and empirical data of ability and inability to pay a fee depends on multiple factors, such as income, the ability to save money, credit availability, and competing priorities. USCIS interpreted "unable to pay" as receiving an means-tested benefit, but is now changing that interpretation to be more consistent.
53	Analytical Evidence	Attributed to Many	Rulemaking is invalid under the Administrative Procedure Act if the agency "entirely failed to consider an important aspect of the problem."	As previously indicated, these form changes are not a rulemaking. Further, the commenter does not explain or provide any support for their assertion. USCIS has considered all important aspects of this policy change.
54	Analytical Evidence	Attributed to Many	Agencies must "examine the relevant data and articulate a satisfactory explanation for its action, including a rational connection between the facts found and the choice made." State Farm, 463 U.S. at 43.	USCIS has provided a rational basis in its three Federal Register notices and in its responses to the public comments.
55	Analytical Evidence	Attributed to Many	USCIS has not provided any data about what percentage of fee-waivers are granted based on each of the three criteria	One study that USCIS conducted in 2017, indicated that 71.9 percent of the fee waiver receipts were approved based on receipt of means-tested benefits, and 26.9 percent based on household income below 150% of the FPG.
56	Analytical Evidence	Attributed to Many	USCIS claims that the means-tested benefit rule results in "inconsistent income levels being used to determine eligibility for a fee waiver," because different states use different income thresholds when granting benefits. 84 Fed. Reg. 26139. That explanation ignores an important fact — different states have different costs of living, and thus the buying power of any one income will not be the same state-to state. USCIS's Notice does not discuss that important issue, and accordingly it does not meet the Administrative Procedure Act's standards for reasonable rulemaking. See also Saenz v. Roe, 526 U.S. 489, 494 (1999) (affirming injunction against state law limiting benefits provided to newly arrived state residents, and quoting the district judge's finding in a related matter that the state's policy "produces substantial disparities in benefit levels and makes no accommodation for the different costs of living that exist in different states.") (emphasis added). For USCIS's decision to be valid under the Administrative Procedure Act, its Notice must make "a rational connection between the facts found and the choice made." State Farm, 463 U.S. at 43. But here, the Notice cites no facts whatsoever — it provides no examples or data showing that people with similar income levels in different states are actually treated disparately under the existing rule, or that the means-tested benefit rule is otherwise flawed. Thus, USCIS has no basis in the administrative record for "disregarding facts and circumstances that underlay or were engendered by the prior policy." Encino, 136 S. Ct. at 2125-26.	Contrary to the commenter's suggestion, USCIS explained in its 2016 fee rule that fee waivers have increased exponentially since means tested benefit receipt was permitted to show eligibility. Categorical eligibility for a fee waiver for means tested benefit recipients has caused fee revenue losses from fee waivers to increase during an economic growth cycle. USCIS notes that USDA has noted a similar problem with the eligibility requirements for its Supplemental Nutrition Assistance Program (SNAP), resulting in significant variation across states in the SNAP eligibility determination process, and in program rules and operations. *See* 84 FR 35570. USDA found that, when using non-cash TANF benefits as the basis of categorical eligibility decisions, many States use income thresholds and resource limits that are higher than the Federal standards for SNAP. Households, who would not otherwise have qualified for SNAP due to their income or resources, are considered categorically eligible and therefore able to receive SNAP. Id. The determination and decision by USDA is important in this context because many USCIS fee waiver requests are accompanied by a letter from USDA approving SNAP benefits.
57	Analytical Evidence	Attributed to Many	When promulgating a new rule, agencies must "examine the relevant data and articulate a satisfactory explanation for its action, including a rational connection between the facts found and the choice made." State Farm, 463 U.S. at 43. The agency's burden is heightened in cases when it rescinds and replaces a pre-existing rule. Encino Motorcars, LLC v. Navarro, 136 S. Ct. 2117, 2125-26 (2016) (citing State Farm, 463 U.S. at 43). In those cases, "a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy." Id. at 2126. The agency must "show that there are good reasons for the new policy" and evaluate the "serious reliance interests" engendered by the prior rule. Id.	This change is not a rulemaking and USCIS has considered all aspects of the problem as explained in the notices, the supporting statement, and our responses to public comments.

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58	Increased Errors-Complexity	Attributed to Many	Currently reject reasons for Fee Waivers submitted on Income at 150% FPG are not detailed enough to resolve issues. The USCIS notifications of fee waiver denials do not provide adequate information about why the supporting documentation was insufficient, leaving practitioners in the dark about how to strengthen fee waiver requests."	USCIS disagrees. USCIS fee waiver rejections now provide details on the reasons for the rejection.
59	Increased Errors-Complexity	Attributed to Many	Currently some rejected applications are resubmitted/sentback to USCIS with same info and are approved.	USCIS receives over 750,000 fee waiver requests per year. USCIS appreciates the comment and will continue to provide training and review of cases for consistency.
60	Increased Errors-Complexity	Attributed to Many	Previously, DHS stated the reason for the rule was to avoid inconsistent adjudications due to the use of varying income levels used by means tested benefits granting agencies around the country. However, no evidence about inconsistent adjudications was provided, nor how varying income levels were relevant to such adjudication given the "inability to pay" standard for fee waivers.	See previous comment response. USCIS has the discretion to interpret "unable to pay" as provided in 8 CFR 103.7(c).
61	Decision by FPG is Subjective	Attributed to Many	Revised fee waiver criteria will lead to arbitrary and capricious decisions.	USCIS disagrees that any decisions will be arbitrary or capricious as the requirements for a request are clear. If the alien meets the criteria and provide the appropriate documentation, USCIS will likely exercise its discretion to approve the waiver. Decisions will be based on if the applicant has documented that they are unable to pay as provided in the form instructions.
62	Redo Other Gov Analysis	Attributed to Many	There is no need to impose that burden on adjudicators, since the work has already been done for those individuals who are able to apply as recipients of means-tested benefits.	See previous comment response.
63	Redo Other Gov Analysis	Attributed to Many	Disqualifying means-tested benefits, which have already been adjudicated and issued by a fellow federal agency, not only undermines the reliability of the other agency's data and methodology, but is wasteful of both government and individual resources and time, goes against precedent, and is arbitrary, failing to fairly measure an individuals' inability to pay a fee.	USCIS disagrees that any decisions will be arbitrary or capricious as the requirements for a request are clear. If the alien meets the criteria and provide the appropriate documentation, USCIS will likely exercise its discretion to approve the waiver. Decisions will be based on if the applicant has documented that they are unable to pay as provided in the form instructions.
64	Redo Other Gov Analysis	Attributed to Many	Individuals who have already passed a thorough income eligibility screening by government agencies should not have to prove their eligibility all over again to USCIS. By eliminating receipt of a means-tested benefit to show eligibility, the government is adding an additional burden on immigrants who already are facing the economic challenge of paying for application fees.	USCIS disagrees that any decisions will be arbitrary or capricious as the requirements for a request are clear. If the alien meets the criteria and provide the appropriate documentation, USCIS will likely exercise its discretion to approve the waiver. Decisions will be based on if the applicant has documented that they are unable to pay as provided in the form instructions.
65	Redo Other Gov Analysis	Attributed to Many	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.	USCIS disagrees that any decisions will be arbitrary or capricious as the requirements for a request are clear. If the alien meets the criteria and provide the appropriate documentation, USCIS will likely exercise its discretion to approve the waiver. Decisions will be based on if the applicant has documented that they are unable to pay as provided in the form instructions.
66	VAWA/T/U-Abuser Tax Transcripts	Attributed to Many	That obtaining tax transcripts for ANY member of the household in which the abuser still resides risks the protections that VAWA intended to create for survivors of violence. Adult children or other family members could have a relationship with the abuser that could lead to disclosure of the applicant's request for their tax documents, triggering further abuse.	Although not required by statute, USCIS has retained flexibilities in the instructions for the VAWA, T, and U population permitting them to submit any relevant evidence of income with their fee waiver request if they are unable to provide the required evidence listed on the form due to their victimization or if requesting such evidence would trigger further abuse or endanger the individual.
67	Eliminating means-tested benefits - impact on Disability Exception or SSI	Attributed to Many	Eliminating the ability to use receipt of a mean-tested benefit as proof of fee waiver eligibility, or any new requirements that make the process more complicated, will further burden those with disabilities in accessing an immigration benefit for which they are eligible. This is especially of clients who are applying for naturalization with Medical Certification for Disability Exception or who receive Supplemental Security Income ("SSI") and their families.	People who are applying for SSI may provide that same income documentation to USCIS with their fee waiver request.
68	VAWA/T/U-Obtaining Tax transcripts	Attributed to Many	For instance, while it is unclear what will be required to show that the lack of documentation normally required under the proposed fee waiver form is not available due to applicant's victimization, we anticipate this would require at least a declaration from the applicant. Presumably, this declaration will require the applicant to explain the circumstances of their abuse or victimization. Not only is this going to be extra work for an advocate and the applicant, but it will also force the applicant to have to again relive traumatic experiences, simply to be able to seek a fee waiver.	To obtain a fee waiver, an applicant must demonstrate that he or she is unable to pay the fee based on the criteria, and should provide the information and evidence in order to establish eligibility. The applicant need only provide sufficient information to establish why the documentation is not available. The form provides space for explanations and attachments are accepted, but a separate declaration is unnecessary.
69	VAWA/T/U-Obtaining Tax transcripts	Attributed to Many	It appears that the instructions would still require IRS tax transcripts for VAWA, U, and T applicants' household members, including those who may be eligible for immigration benefits as derivative beneficiaries. Further, if the applicant is a child and is listed as a dependent in another individual's tax return, the applicant would be required to submit that individual's tax transcript. For all of these reasons, many VAWA, U, and T applicants would be subject to the new requirements mandating the submission of IRS tax documentation.	All applicants for a fee waiver are subject to the evidence requirements as provided in the revised form instructions, which include more flexible rules with respect to the groups this comment mentions. If individuals are unable to obtain documents due to their victimization or to avoid triggering additional abuse, they can explain why they are unable to obtain such documentation and submit other evidence to demonstrate their inability to pay.
70	Increased Errors-Complexity	Single	Further, costs to the agency would be less it didn't make so much work for itself evidenced by the high RFE, NOID and denial rates that create processing time backlogs, and in the case of other immigration areas, requires additional work and travel permits, extension requests and other applications. Many RFEs could be avoided due to just sloppy adjudications.	Thank you for your comment. USCS is always striving to streamline its adjudications while protecting the integrity of the U.S. immigration system.
71	Reduce FWR/Increase Income Revenue	Attributed to Many	Now, DHS presents a new reason for the rule - to recoup revenue lost from the cost of fee waivers. This reasoning is unsupported by evidence. Filing fees are set bi-annually based on a cost analysis that includes potential fee waiver use. However, the level of filing fees based on cost to process applications has nothing to do with the proposed change here, which is to eliminate an eligibility criterion for a fee waiver, i.e., receipt of means tested benefit, where the requirement for a fee waiver is "inability to pay" not revenue collection or analysis.	The effects of this change are unknown at this point, although USCIS expects its revenue losses from fee waivers to decrease over time. DHS will consider the actual fiscal impacts of this change in the next comprehensive review of costs and revenue when it considers adjusting USCIS fees as required by the CFO Act. As the commenter indicates, the actual results could have an effect on fee levels, once that effect is known. USCIS fees must be reviewed every two years , however, they do not need to be adjusted concomitant with this or any other policy change that may affect revenue or costs.

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72	Reduce FWR/Increase Income Revenue	Single	Unless or until the agency proposes to alter the Code of Federal Regulations, USCIS is bound to waive fees for as many applicants as are able to demonstrate their inability to pay fees associated with the application types listed at 8 C.F.R. § 103.7(c)(3-4). Should the granting of fee waivers for which eligibility is proven cause any strain on USCIS's budget, the law provides that, "fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services [and...] any additional costs associated with the administration of the fees collected," 8 U.S.C. § 1356(m). The process of setting fees for immigration services is governed by USCIS regulations, the APA rulemaking process, and other agency guidelines that set forth the specific criteria and procedures for the process.	The effects of this change are unknown at this point, although USCIS expects its revenue losses from fee waivers to decrease over time. DHS will consider the actual fiscal impacts of this change in the next comprehensive review of costs and revenue when it considers adjusting USCIS fees as required by the CFO Act. As the commenter indicates, the actual results could have an effect on fee levels, once that effect is known. USCIS fees must be reviewed every two years , however, they do not need to be adjusted concomitant with this or any other policy change that may affect revenue or costs.
73	Reduce FWR/Increase Income Revenue	Attributed to Many	While the proposed Fee rule that USCIS cites here does refer to overall agency revenues being lost due to fee waivers and exemptions, it refers to them collectively. When exemptions are included together with fee waivers in any statistic, the number reported is meaningless to determine the impact of fee waiver. Exemptions are not subject to the I-912 and its current fee waiver standards. By regulation, limited types of humanitarian applications are fee exempt. revenues estimated to be lost, even if correct in the aggregate, are thoroughly misleading because they do not specify the specific impact of fee waivers.	USCIS estimates that that the use of fee waivers reduced its revenue in FY 2018 by $293.5 million. Although this amount was less than the estimated foregone revenue due to fee waivers of $367.9 million in FY 2017 and $344.3 million in FY 2016, this represents a significant financial burden. These estimates presume that all applications with an approved fee waiver would have been filed with the appropriate fee had a fee waiver not been available.
74	American Dream/Values	Attributed to Many	Commenters responded that the proposed changes do not align with American values and will make it hard to achieve the American Dream.	This form change does not prevent aliens from filing fee waiver requests or from obtaining immigration benefits or achieving the American Dream. Applicants are still eligible to request a fee waiver and are able to obtain their immigration benefits as provided under the law.