



December 27, 2019

*Submitted via [www.regulations.gov](http://www.regulations.gov)*

Ms. Samantha Deshommes, Chief  
Regulatory Coordination Division  
Office of Policy and Strategy  
U.S. Citizenship and Immigration Services  
20 Massachusetts Ave. NW  
Washington, D.C. 20529

**Re: U.S. Citizenship and Immigration Services Fee Schedule, DHS Docket No. USCIS-2019-0010; RIN 1615-AC18, Comments on Forms I-912 and I-129MISC**

Dear Chief Deshommes:

Catholic Legal Immigration Network, Inc., (CLINIC) separately submitted extensive comments on the content of the proposed fee schedule in conjunction with our Catholic Partners: United States Conference of Catholic Bishops Migration and Refugee Services (USCCB/MRS) and Catholic Charities USA (CCUSA). CLINIC now submits these comments to respond to the proposed changes to two forms in connection with the proposed fee schedule: Form I-912, Request for Fee Waiver, and I-129MISC, Petition for Nonimmigrant Worker, as it would relate to religious workers. We are concerned about a number of the proposed changes to these forms, and request that USCIS withdraw all changes that make fee waivers and religious worker status less accessible.

Embracing the Gospel value of welcoming the stranger, CLINIC promotes the dignity and protects the rights of immigrants in partnership with a dedicated network of immigration legal services programs. This network includes approximately 380 programs operating in 49 states and the District of Columbia. CLINIC's network employs roughly 1,400 attorneys and accredited representatives who, in turn, serve hundreds of thousands of low-income immigrants each year. Nearly all of CLINIC's affiliates offer family-based immigration, naturalization and citizenship, and other categories implicated by the proposed changes to the fee waiver. CLINIC's Religious Immigration Services section provides direct representation to religious organizations that wish to bring a religious worker to the United States.

Based on these areas of expertise, CLINIC is concerned about the proposed changes to Form I-912, Application for Fee Waiver, and Form I-129MISC, Petition for Nonimmigrant Worker, as the changes to both forms would make it more difficult for applicants and petitioners to accurately and successfully complete the forms.

## **I. Form I-912, Request for Fee Waiver**

Our joint public comment with USCCB/MRS and CCUSA addresses our concerns about the policy changes to the fee waiver as described in the proposed fee schedule. In particular, we oppose the elimination of fee waivers for all categories of immigrant benefits other than statutorily required. We incorporate those comments by reference, and will address the associated form in more detail here.

### **I. General Comments on Changes to Form I-912**

CLINIC is concerned about changes to Form I-912 that would limit the criteria to demonstrate inability to pay; the burdens that these changes would place on applicants, particularly vulnerable applicants who are victims of crime; and USCIS' disregard for the congressional intent that naturalization remain affordable.

#### **A. USCIS Should Maintain the Three Criteria for Demonstrating Inability to Pay**

In addition to drastically limiting the types of immigration benefits for which a fee waiver can be requested, the proposed changes to Form I-912 significantly change the way in which applicants would demonstrate their inability to pay the fee. As described in more detail below, the revised form relies almost entirely on the Federal Poverty Guidelines (FPG) to determine a person's inability to pay the fee. Previously, an applicant could use receipt of a means-tested benefit or evidence of a financial hardship to demonstrate inability to pay. Those criteria have been eliminated from the form.

The FPG alone are not a sufficient method to determine all applicants' ability or inability to pay a fee. USCIS requires applicants to demonstrate that they are unable to pay the prescribed fee.<sup>1</sup> The proposed changes to the form would result in denials of fee waivers for a significant number of applicants who do not fall below the FPG threshold but who nonetheless have a bona fide inability to pay the fee. The addition of a second criterion in the revised form for those impacted by disasters that are affirmatively recognized by the agency will apply to very few people and will not substantively alleviate the problem created by this form change. The current version of the form provides three methods to demonstrate an inability to pay because peoples' and families' financial status is too complex to be accurately encompassed by a single FPG calculation.

While the FPG may be a useful tool in some contexts, it is far too inaccurate to be the sole determinant of ability to pay a fee, as it does not account for differences in cost of living between the 48 contiguous states or between rural and urban communities.<sup>2</sup> Demonstrating inability to pay through receipt of a means-tested benefit is far more accurate for those who live in areas of the country with a higher cost of living. The federal government acknowledges that the states are best qualified to analyze their own conditions and cost of living, and allow them to

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<sup>1</sup> See 8 C.F.R. 103.7(c) (requiring applicants for fee waiver to demonstrate inability to pay the prescribed fee).

<sup>2</sup> See Declaration of Andrew Wong at 2-5, *City of Seattle v. DHS*, No. 3:19-cv-07151-MMC (N.D. Cal. filed Oct. 30, 2019).

set their own threshold to determine their residents' need.<sup>3</sup> In fact, 26 states have set eligibility thresholds above 150 percent of the FPG and 31 percent of households that receive means-tested benefits have incomes that exceed 150 percent of the FPG.<sup>4</sup> Therefore, relying only on a nationwide threshold of 125 percent of the FPG would exclude many people who have been designated based on their state's economic conditions to be in need.

We oppose the elimination of the three prior criteria. The new guidelines are so narrow that very few people will be able to qualify despite their bona fide inability to pay the fee. We recommend that USCIS maintain the three criteria to demonstrate inability to pay in order to ensure that immigration benefits are not limited to the affluent, but are accessible to all socioeconomic strata that make up American society.

### **B. USCIS Should Not Increase the Burden on Applicants, Particularly Vulnerable Victims of Crime**

Relying solely on the FPG threshold would significantly increase the burden on applicants, requiring significantly more information, evidence, and effort to support their eligibility. CLINIC affiliates report that almost all of the fee waivers they file are based on the applicant's receipt of a means-tested benefit. For an individual applicant, applying for a fee waiver by showing receipt of a means-tested benefit (as opposed to the other criteria) is the least burdensome option, requiring gathering the least amount of evidence and filling out the least amount of paperwork. The current fee waiver application section that pertains to the means-tested benefits criterion has one question, while the section of the proposed Form I-912 that gathers information on household income covers nearly three pages of questions. Furthermore, it is efficient for individuals to be able to utilize the time and effort they spent applying for the means-tested benefit at the state or local agency in order to apply for immigration benefits.

In the case of immigrant survivors of violence, presenting evidence of means-tested benefits was an unambiguous method to demonstrate financial hardship without relying on documentation that may be unsafe or burdensome to obtain. For over a year, advocates have voiced their strong opposition to the I-912 form changes as they have limited survivors' access to immigration relief. Current fee waiver adjudications are inconsistent, and often do not contain any details why a fee waiver request has been rejected.

The proposed (and current) I-912 instructions create additional burdens that are ultra vires to the statute permitting fee waivers for survivor-based cases, as it appears as if survivors need to demonstrate a nexus between their victimization and their lack of income or proof of income.<sup>5</sup> This non-statutory 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

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<sup>3</sup> *Id.* at 6-8.

<sup>4</sup> *Id.* at 7.

<sup>5</sup> The current I-912 instructions 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."

victimization. Further, this language runs counter to existing law as Congress did not place any such limits on fee waivers when it codified their use for survivor-based relief.<sup>6</sup>

We oppose this significant increase in the burden to apply for a fee waiver that would disadvantage hard-working families and vulnerable victims of crime. We recommend maintaining the means-tested benefits criterion as it is the least burdensome and most accessible application criterion for vulnerable immigrant populations.

### **C. USCIS Should Respect Congress' Intent to Keep Naturalization Affordable**

Fee waivers are crucial in providing individuals and families with access to vital immigration benefits including citizenship and naturalization, work authorization, green card renewals, certain humanitarian and survivor-based benefits, and more.<sup>7</sup> Fee waivers help people to stabilize their situations, financially support themselves, and fully integrate into their communities. These immigration benefits have the power to lift up and transform families, communities, and the country as a whole. Because of the benefits of naturalization—one of the form types most frequently associated with fee waiver requests<sup>8</sup>—Congress has called on USCIS to keep the pathway to citizenship affordable and accessible. A recent Congressional Committee report states, “USCIS is *expected* to continue the use of fee waivers for applicants who can demonstrate an inability to pay the naturalization fee.”<sup>9</sup> USCIS’ proposed changes to filing fee waivers would severely undermine congressional intent.

The proposed rule acknowledges this congressional intent, states that USCIS considered this instruction, and decided to disregard it, claiming that fee waivers for naturalization are unsustainable.<sup>10</sup> To support this claim, USCIS stated only a hypothetical concern that if the economy should worsen, the number of fee waiver requests “could” disrupt USCIS’ services.<sup>11</sup> A concern based on a hypothetical situation and not based on evidence of current trends is not sufficient evidence to disregard the explicit intent of Congress. Furthermore, when Congress stated this intent, basic concepts such as economic variability and cost-sharing among applicants were well-known to Congress, and did not change their stated intent to prioritize the availability of naturalization in order to benefit our society as a whole.

## **II. Specific Comments on the Content of Form I-912**

### **Part 1**

Part 1 reflects the drastic changes between the former and new Forms I-912, for the new version entirely changes the bases for requesting a fee waiver. Part 1 used to contain three criteria: (1)

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<sup>6</sup> See 8 U.S.C. 1255(1)(7).

<sup>7</sup> Filing fee waivers are currently available for over two dozen form types. See *Request for Fee Waiver*, [www.uscis.gov/i-912](http://www.uscis.gov/i-912).

<sup>8</sup> *USCIS Fee Waiver Policies and Data, Fiscal Year 2017 Report to Congress*, USCIS (Sept. 17, 2017), [www.dhs.gov/sites/default/files/publications/USCIS%20-%20Fee%20Waiver%20Policies%20and%20Data.pdf](http://www.dhs.gov/sites/default/files/publications/USCIS%20-%20Fee%20Waiver%20Policies%20and%20Data.pdf).

<sup>9</sup> H. Rep. No. 115-948 accompanying H.R. 6776, the Department of Homeland Security Appropriations Act (2019).

<sup>10</sup> See *U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements*, 84 Fed. Reg. 62,280, 62,300 (proposed Nov. 14, 2019).

<sup>11</sup> *Id.*

receipt of a means-tested benefit, (2) household income less than 150 percent of the FPG, and (3) financial hardship. Now, however, Part 1 only allows for two categories of individuals who may qualify for a fee waiver:

- Individuals whose annual household income is lower than 125 percent of the FPG and who have or are applying for benefits as a:
  - Battered spouse or child
  - T status
  - U status
  - VAWA
  - TPS
- Individuals who have been impacted by a disaster declaration that has been posted on USCIS.gov; whose annual household income is at or below 125 percent of the FPG; and who is not subject to public charge or affidavit of support requirements.

**Question #1.A** narrows the threshold for a determination of low income from 150 percent of the FPG to 125 percent of the FPG. This is too low. The FPG are already so low that many families who make 150 percent or more of the FPG still struggle to make ends meet. For example, the current FPG for a family of four is just \$25,750. A family of four at 150 percent of the FPG (\$38,625) would still struggle to pay for rent, food, and other essentials. The national average for rent in the U.S. reached an all-time of \$1,405 in June 2018,<sup>12</sup> so the family at 150 percent of the FPG would spend 44 percent of their income on rent, leaving little left over for other essential expenses. The new guidelines would exclude applicants who are elderly, disabled, students, or others who are simply working poor and unable to pay the high application fees, yet unable to meet the new, narrow criteria for fee waiver consideration.

**Question #1.A** also states that an applicant must be applying for one of the listed statuses and must provide the receipt number for the selected category. However, the applicant may not yet have a receipt number. Consequently, this instruction should be changed to, “If available, provide the receipt number.”

**Question #1.B**’s new guidelines allowing fee waivers for those impacted by a disaster are unclear. The form states in Part 1 that in order to be eligible, these applicants must have an annual household income at or below 125 percent of the FPG. They must then provide information about their income in Part 3, discussed in more detail below. However, in Part 3, number 11 they are asked to provide information about their expenses, debt, or losses incurred in the disaster. It is unclear why this additional information is needed, if the applicant has already been required to document their income at or below 125 percent of the FPG. This information request does not fit into the eligibility guidelines based on income, and is not relevant to USCIS’ adjudication. We recommend either deleting item 11 in Part 3, or expanding the eligibility guidelines to include financial hardship for those impacted by a disaster who are unable to document low income.

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<sup>12</sup> Rachel Layne, *U.S. Housing Rents Hit Record-High Average of \$1,405 Per Month*, CBS News (July 6, 2018, 2:57 PM), [www.cbsnews.com/news/u-s-urban-rents-hit-all-time-high-at-average-1405-report/](http://www.cbsnews.com/news/u-s-urban-rents-hit-all-time-high-at-average-1405-report/).

## **Part 2**

**Question #9**, which in part asks for a receipt number, if applicable, has been stricken and replaced with the aforementioned request for receipt number in part 1, question #1.B. The phrase “if applicable” should likewise be transferred to the request for receipt number in part 1, question #1.B.

## **Part 3**

Part 3 asks for gross income, but neither the form nor the instructions define the term. “Gross income” needs to be explained, especially for those who are not able to simply refer to the “gross income” line on their tax return. We recommend that USCIS define “gross income” on the form just below the heading for Part 3 and in the corresponding instructions.

**Question #4**’s chart currently only contains four (4) spaces total for listing household members. We recommend six (6) spaces, along with instructions above the chart for what to do if the applicant needs more spaces. Alternatively, we recommend providing the chart again in part 7 for those who need more space to list household members.

**Question #6** asks for applicants’ annual gross income. We recommend explicitly instructing applicants where to find their gross income.

**Question #8** instructs applicants to attach evidence of additional income sources, but the form does not instruct applicants to attach IRS transcripts for the most recent tax year. Instead, this information is buried on page 5 of the instructions under Your Annual Gross Household Income. We recommend explicitly instructing applicants that they need to attach a copy of their tax transcripts.

Additionally, the instructions on p. 5 under “Your Annual Gross Household Income” say to “submit any tax transcripts that you or your household members filed with any foreign government if you or your household members were residing outside of the United States during any time within the last tax year...” This creates a burdensome new requirement that many applicants will be unable to meet, either because it’s too difficult to obtain the documentation or because they were too poor to file taxes with a foreign government. We recommend removing this requirement.

Furthermore, we oppose the requirement to submit official IRS tax transcripts for all the reasons previously cited in our comments on the fee waiver form change. Official IRS tax transcripts have never been required before, and obtaining them is burdensome and time-consuming for both applicants and advocates. A copy of the tax return as filed should continue to be sufficient evidence of income.

**Question #10** is a catch-all for describing special circumstances. Applicants could easily miss it. We recommend adding a new item number after 10 for those who have no income or are homeless to describe their circumstances, e.g., “If you have no income and/or are homeless, you may use this space to provide additional information.”

**Question #11** is redundant, as stated above, and we recommend that it be deleted.

## **Recommendations**

CLINIC recommends that USCIS revert and retain the previous version of Form I-912 (03/13/2018 edition). USCIS should keep in mind the burdens imposed on applicants with its increased evidence requirements and repetitious and extraneous information collection, and streamline Form I-912 for a more efficient and user-friendly application for fee waiver.

### **III. General Comments on Changes to the Structure of Form I-129MISC**

CLINIC is concerned about some changes to Form I-129 (proposed Form I-129MISC) that would make applications for R nonimmigrant visas less efficient and more confusing. We are concerned about the noticeable structural changes to the form, in particular to the R-1 supplement. With such change, there could be unintentional errors, initially, in the way the questions are answered. The current version of the form is organized and follows a clear structure. The proposed revised Form I-129 moves from one topic to another, not following a logical progression. We recommend that Form I-129MISC be revised to follow a logical structure, mirroring the respective section of the Code of Federal Regulations.

As described in detail below, CLINIC is also concerned about certain questions that are redundant and that broaden the scope of the question needlessly. These revised questions would lead to waste of time and resources providing information that USCIS already has or does not need in order to complete its adjudication.

### **IV. Specific Comments on the Content of Form I-129MISC**

#### **Part 1**

**Question #10** does not include an option to select “Not Applicable” if a Social Security number is not available.

#### **Part 2**

**Question #3** requests that a petitioner for amended status provide the receipt number of the petition they seek to amend. However, in Part 3, Question #17, the petitioner would have to enter the receipt number again. This is repetitive. There are several bases for classification in which a previous receipt number would be necessary for adjudication. We recommend that USCIS consolidate and only request a receipt number once for any basis that would be applicable.

#### **Part 4**

**Questions #9 and #10** ask if the beneficiary has ever been granted or denied the classification requested. The current version of the form limits the scope of these questions to the last 7 years. By removing the time limitation on this question, USCIS is requesting information that may be

overly burdensome for petitioners and beneficiaries to provide, if the information has been lost over time. Information beyond 7 years is also unnecessary for USCIS' adjudication, as that time period would necessarily encompass enough time to demonstrate that a beneficiary who had spent the maximum 5 years in a previous R-1 status had spent the requisite one year outside the United States to be eligible for readmission.

## **Part 5**

**Question #6** contains a typographical error. "If the answered 'No'..." should be "If you answered 'No'...."

## **R-1 Classification Supplement**

### **Section 1**

**Question #18** has been revised to provide less context and detail for this request for information about secular employment. Specifically, the phrase "[i]f the position is not a religious vocation..." has been removed, making the question much broader than the previous version. This broad question is more difficult for petitioners to answer, and could result in answers that create more confusion for adjudicators. Broadening this question could result in more Requests for Information, leading to more time and resources spent by both the petitioner and the adjudicator.

### **Recommendations**

CLINIC recommends that USCIS change Form I-129MISC to address each of our concerns above. USCIS should keep in mind the burdens imposed on applicants due to repetitious and extraneous information collection, and streamline form I-129MISC for a more efficient and user-friendly petition for religious worker classification.

### **III. Conclusion**

We request that USCIS reconsider the proposed revisions to Forms I-912, Application for Fee Waiver, and I-129MISC, Petition for a Nonimmigrant Worker, to ensure that Fee Waivers and Religious Worker classification remain available and are adjudicated efficiently.



Thank you for the opportunity to submit these comments. We appreciate your consideration. Please do not hesitate to contact Jill Marie Bussey, CLINIC's Director of Advocacy, at [jbussey@cliniclegal.org](mailto:jbussey@cliniclegal.org) should you have any questions about our comments or require further information.

Respectfully submitted,

A handwritten signature in blue ink that reads "Anna Gallagher". The signature is written in a cursive style with a large initial "A".

Anna Gallagher  
Executive Director  
Catholic Legal Immigration Network, Inc.