Seattle
Office of Immigrant and
Refugee Affairs
Cuc Vu, Director

July 3, 2019

Submitted via email

OMB USCIS Desk Officer
dhsdeskofficer@omb.eop.gov

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

Dear Desk Officer:

The City of Seattle ("the City") submits this comment in response to the proposed revision of a currently approved collection published by the Department of Homeland Security (DHS) and the United States Citizenship and Immigration Services (USCIS) in their Agency Information Collection Notice published on June 5, 2019. We are responding to the lack of response to the public comments previously submitted on April 5, 2019 and to address the inadequacy of responses by USCIS to comments submitted in response to their Notice of Revision of Currently Approved Collection published on September 28, 2018.

The City of Seattle continues to strongly oppose the proposed rule to modify Form I-912, Request for Fee Waiver.

The City of Seattle created the Office of Immigrant and Refugee Affairs (OIRA) in 2012 to improve the lives of Seattle's immigrant and refugee families. Through OIRA, the City of Seattle funds and coordinates two naturalization programs called the New Citizen Campaign (NCC) and the New Citizen Program (NCP) to help an estimated 75,000 Seattle-area legal permanent residents ("LPR") become U.S. citizens. Since its inception in 1997, NCP has served over 19,000 people, provided naturalization assistance to over 12,300 LPRs, successfully naturalized 9,500 LPRs, and provided over 90,000 hours of citizenship instruction. NCC works with community partners to co-host events called citizenship clinics and citizenship workshops all over Seattle that have to date served 1,843 LPRs.

Form I-912 allows individuals with financial need to apply for certain immigration benefits without a filing fee. Fee waivers aid the most vulnerable immigrants, including refugees, asylees, unaccompanied minors,

and victims of trafficking. For LPRs eligible to naturalize, it affords those unable to pay the $725 filing fee the opportunity to achieve the dream of U.S. citizenship. The proposed modification for Form I-912 would make it significantly more difficult for the City's constituents and program participants to prove eligibility for the fee waiver.

The "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"[1] did not adequately address any of the concerns expressed in OIRA's initial November 2018 public comment. To date, USCIS also has not at all responded to any public comments from the previous 30-day Federal Register Notice 84 FR 13687.

I. USCIS has failed to respond to previous arguments against this form change; we therefore reiterate our previous arguments here.

USCIS' response to the initial 60-day comment period does not address the harm the change to Form I-912 and the eligibility criteria for a fee waiver would have on applicants and especially very-low income families. In the agency's announcement of a third comment period, USCIS does not address these concerns at all. The USCIS lack of response seems to deny the real harm that would be caused by this policy change. We therefore reiterate the arguments made in our previous comments about harm this policy would cause to low-income immigrants, Department of Justice (DOJ)-recognized agencies, and the City of Seattle as a whole.

a. The proposed change would cause direct harm to low-income immigrants.

The USCIS policy change presented in the proposed form change for Form I-912 request for fee waiver, would cause direct harm to low-income immigrants. The proposed change would eliminate the most commonly used and most accessible way to establish fee waiver eligibility. It instead calls for documentation that the average person does not have readily available, and that would be impossible for a significant portion of the population to obtain. Those most likely to lack this documentation are very low-income immigrants and refugees.

As argued in our response to USCIS published responses to the 60-day comment period, the USCIS claim that those who receive public benefits would also have other proof of income is baseless. First, many immigrants and refugees receiving public assistance in fact do not have any income documentation available, because they are newly arrived to the United States, or because their only source of income is public assistance, or because their income level has changed since the previous tax year. Second, the form change published on April 5, 2019 and the most recent version published June 5, 2019 both call for tax

[1] U.S. Citizenship and Immigration Services, Federal Register, Agency Information Collection Activities; Form I-912; Request for an Individual Fee Waiver, Docket ID: USCIS 2010-008, "USCIS Responses to Public Comments on I-912 Revision 60-day Federal Register Notice," April 5, 2019, https://www.regulations.gov/document?D=USCIS-2010-0008-1243.

transcripts over income tax returns. It is extremely rare for any person to need their tax transcripts, especially since the majority of situations requiring proof of income more readily accept the more easily accessible tax return, so this transcript documentation is not "readily available" for the vast majority of fee waiver applicants.

Tax transcripts were in fact not previously accepted by USCIS as adequate proof of income. An applicant would usually have no reason to obtain tax transcripts and would need to order these. While an applicant may be able to view tax transcripts online, this requires the following proof according the Internal Revenue Service (IRS): "access to your email account; your personal account number from a credit card, mortgage, home equity loan, home equity line of credit or car loan; and a mobile phone with your name on the account."[2] For low-income populations, access to an individual mobile phone account or email address, much less other financial accounts, can be out of reach.

This means that whole segments of the population who would need to obtain tax transcripts in order to qualify for a fee waiver would be unable to do so immediately online. Those without the above information can have tax transcripts mailed in five to ten days to the mailing address *listed on the last tax return*. Applicants who have moved since then would experience an additional burden. None of this evinces the USCIS claim that this form of income documentation is "readily available." Additionally, the IRS has instituted a new tax transcript protocol to protect taxpayer data. This new transcript will include limited identifiable information for the taxpayer, including the last four digits of the social security number and the first four characters of the taxpayers' surname.[3] USCIS has not addressed whether this redacted tax transcript will be sufficient for use as evidence of an applicant's income without their full identifying information.

The time and resource burden of obtaining tax transcripts is great, but even greater is the burden of filing income taxes for applicants who are not required to file them, just to prove income eligibility for the fee waiver. For such families, they would need to attend multiple appointments with nonprofit community organizations or with tax preparation agencies to file taxes that they would otherwise not be required to file. If DOJ-recognized agencies have the capacity to assist, this process could be free or low-cost. If they do not have the capacity to assist, which is likely to be the case (see discussion in Section b. below), they would need to pay an accountant or tax agency for this assistance. If they have no earned income, this could amount to a Kafkaesque process starting with months of waiting for proof from the IRS that they in fact have no income to report, then filing this lack of income with the IRS, only to prove to USCIS what could have previously been proven with a simple letter from a benefits-granting agency.

Throughout USCIS responses published April 5, 2019 to the initial comment period, the agency continually belittles the burden this policy change would incur on low-income immigrants, and goes even further to

[2] https://www.irs.gov/individuals/get-transcript
[3] https://www.irs.gov/individuals/about-the-new-tax-transcript-faqs

disparage low-income immigrants as unworthy. For example, the USCIS response to Comment 9 asserts that applicants who are unable to obtain a fee waiver for naturalization can instead simply renew their green card. This statement ignores the fact that someone unable to pay the $725 naturalization filing fee may be similarly unable to pay the $495 green card renewal filing fee.

Moreover, the agency claims that applicants who are unable to obtain a fee waiver can simply save up money over time. This assumes all households have disposable income, which is unfounded. Applicants without the appropriate documentation to prove fee waiver eligibility would experience direct harm. Many clients, if they are unable to obtain the documentation necessary to support an income- or hardship-based fee waiver request, will be forced to take out a high-interest loan. Some clients will be forced to choose between paying an application fee and paying their other basic needs bills. Some applicants will have no choice but to give up on their applications because their fixed incomes do not allow them to save for a filing fee or to pay back a loan.

USCIS continues to ignore the disproportionate harm this policy change would have on low-income immigrants. In the response to Comment 11 published with the previous notice, USCIS states that "[p]roviding the criteria in policy guidance for how an applicant may provide evidence of eligibility to have such fees waived is neither punishing nor discriminatory." However, based on the time and resource burden of obtaining tax transcripts, especially for very low-income applicants who have not previously filed tax returns, along with the experience of our community partners who have avoided submitting income-based fee waivers due to consistent denials, the newly proposed criteria will negatively and disproportionately impact immigrants with low incomes. Hence, the criteria as stated is both discriminatory and punishing to low-income immigrants. USCIS proceeds to then not respond to the discriminatory nature of this form change against low- and very low-income applicants.

The inability to prove fee waiver eligibility or pay filing fees can lead to more profound harm. Individuals lacking proof of lawful status are in violation of federal law and face greater risk of negative encounters with immigration officials, including detention and placement in removal proceedings. Residents of Seattle and King County are further at risk for expedited removal by U.S. Customs and Border Patrol due to their vicinity to the U.S.-Canada border. LPRs need valid proof of their lawful status, and making it harder to obtain a fee waiver for the I-90 compromises their stability and security in the U.S. The proposed rule subjects vulnerable populations to deeper poverty and possible arrest.

In response to Comment 11, USCIS notes that prior to current policy, low-income applicants still filed for benefits and paid fees. This is true, but misleading. Prior to the introduction of USCIS Form I-912, applicants still had the opportunity to request that fees be waived by demonstrating their inability to pay as stated in CFR 103.7(c)(2). Applicants requesting that fees be waived would still submit evidence of inability to pay,

including proof of receiving means-tested benefits. Applicants could submit a benefits letter with a brief explanation that receipt of such benefits shows their inability to pay the filing fee; many service providers had template letters to which they could quickly and simply add the specific details of their client's financial need, making the process less burdensome than the new requirement to obtain tax transcripts. Furthermore, USCIS provides no evidence regarding rates of application filings among low-income applicants prior to Form I-912 and after.

Throughout its responses, USCIS promotes an unfounded claim that immigrants are taking advantage of the system through fee waiver filings. USCIS asserts in response to Comment 10 that families with income "considerably above the poverty level" are granted fee waivers. Evidence of this claim is not provided anywhere in USCIS's responses. And this assertion is significantly damaging to the most vulnerable LPR populations, in that those most likely to suffer under this proposed change are the very low-income families who do not have enough earned income to warrant tax filings or who have no earned income at all and therefore no documentation of financial hardship aside from their receipt of public benefits.

b. The proposed form change would cause direct harm to DOJ-recognized agencies and their staff.

USCIS does not address the increased burden for immigration advocates and DOJ-recognized agencies, except to note in response to comments published April 5, 2019 that advocates will now need to provide affidavits to victims of certain types of crime to replace the previous standard of providing proof of means-tested benefits. In the most recent notice published June 5, 2019, USCIS makes no effort to respond to the thousands of comments received through both previous commenting rounds. In Comment 7 from the April 5th response, USCIS asserts that nonprofit community organizations would simply need to copy applicants' income tax returns instead of copying their public assistance letters. However, as outlined above, many low- and very-low income immigrants and refugees do not have income tax returns, or other proof of income, or in some cases any income aside from public benefits. Moreover, since the April 5th and June 5th publications of the edited Form I-912 require tax transcripts, this USCIS response is completely false. As nonprofit organizations would need to additionally help applicants obtain these transcripts before they can be copied, which inefficiently increases the amount of time organizations will be required to spend with their clients.

Where applicants have not filed income taxes, a nonprofit agency may need to assist the applicant in filing, despite the fact that the applicant's income is so low they would not otherwise be required to file federal income taxes. This is extra additional time. Or they may need to assist the applicant in obtaining IRS tax transcripts, with the difficulty of that process outlined above. This is extra additional time. For those who have never earned taxable income, agencies would need to apply to obtain tax transcripts and W-2s in order to obtain proof from the IRS that the agency has no such documents on file for those individuals. This

is extra additional time. Advocates may need to call in the client's family members to appointments to offer affidavits on behalf of the applicant or to provide their own W-2 forms or file taxes for these household members. This is extra additional time. In none of these cases is the process as easy as obtaining a copy of the person's proof of receiving public assistance. And it is unlikely that these additional burdensome efforts would be deemed sufficient to prove income eligibility for the fee waiver. Advocates would additionally need to collect proof of *current* income on behalf of all household members to submit with the application. All of this requires hours of additional work that USCIS seems to completely ignore in their consideration of this form change.

The resources needed to prepare income- or hardship-based fee waiver applications will overwhelm the limited resources of nonprofit agencies that help LPRs. Agency staff time could be more efficiently used to prepare applications and attend client interviews at USCIS rather than collecting unnecessary IRS documentation on behalf of clients' household members. Collectively, the extra time expended per client will mean fewer clients served. As many grants to service providers are based on outputs and outcomes, serving fewer clients and performing fewer service activities may lead to reductions in outside funding. As funding decreases, agencies may be forced to lay off staff, further hampering their capacity to serve clients.

Staff layoffs make it harder for agencies to retain institutional knowledge and maintain DOJ recognition. DOJ-accredited representatives must study immigration law and obtain practical work experience, often for several years, to attain this credential. They attend trainings to stay informed about changes to the law. Cuts to staffing are a waste of the finite resources spent on staff training and lead to a gutting of the knowledge base of an individual agency. All of this adds up to direct harm to dozens of Seattle-area nonprofit agencies serving low-income immigrants and refugees, and the USCIS response to initial comments fails to address this harm.

c. The proposed change would harm the City of Seattle, especially its citizenship programs.

A significant portion of OIRA's two previous comments focused on the harm the proposed fee waiver changes would cause Seattle residents and specifically the participants of our two City of Seattle naturalization programs. In fact, a significant portion of comments to the first two public response periods addressed the concern that a change to the fee waiver would meaningfully harm applicants for immigration benefits. Yet, the USCIS response belittles these significant concerns by stating, "USCIS does not believe the changes are an excessive burden on respondents" (Comment Response 1). For the second round of comments, USCIS did not bother to publish a response. The City of Seattle, through the Office of Immigrant and Refugee Affairs, has an ongoing and significant investment in naturalization services, through both the New Citizen Program (NCP) and New Citizen Campaign (NCC). We work with local and national partners to engage Seattle-area LPRs via outreach, education, citizenship workshops, legal assistance, and case management. NCC works with community partners to co-host citizenship clinics all over Seattle, serving an

average of 30-50 individuals per month and has organized large-scale events that have to date served 1,082 legal permanent residents. NCP is a separate component of the New Citizen Campaign. Through its consortium of 12 community-based nonprofit organizations, NCP provides ongoing free case management services to immigrants and refugees living in Seattle/King County who are low-income, elderly, illiterate, or have limited English skills. To qualify for NCP services, clients must either receive a means-tested public benefit or be a low-income resident of Seattle.

This proposed change would harm the City of Seattle because of the suffering its implementation would cause to the city's vulnerable residents and the nonprofit community outlined above. It would also harm the City through the economic losses associated with LPRs *not* naturalizing. In both of our initial comments, we argue that providing fee waivers for naturalization applications leads to immense individual and community benefits, both economic and otherwise. Recent studies show the enormous contributions of naturalized U.S. citizens and the individual economic improvements immigrants experience when they naturalize. For example, if all eligible LPRs naturalized, it could add $2 billion in annual tax revenue nationally.[4] Moreover, naturalized citizens are less likely to experience unemployment[5] and are more likely to buy homes, to invest in their local economies,[6] and to increase their earnings by eight to 11 percent.[7] By neglecting to respond to the positive outcomes for naturalized citizens, USCIS further promotes the ideology that immigrants are unfairly taking advantage of the fee waiver process. It also ignores the negative consequences this policy change that is essentially disguised as a form change would have on the City of Seattle and its economy.

Beyond the harm to residents, our nonprofit community, and the greater Seattle community and economy, the proposed change would directly harm the City's financial investments in naturalization. First, the New Citizen Program services and capacity would suffer. To qualify for NCP services, clients must either receive a means-tested public benefit or be a low-income resident of Seattle. (Clients who receive a means-tested benefit may reside outside of Seattle. And those who do not must reside within Seattle city limits and provide proof of their low-income status.) In 2018, 573 NCP clients filed N-400 applications and among these, 96 percent (549) filed an accompanying I-912. Only 8 percent (42) of the 549 fee waiver requests filed were submitted by someone not on public benefits. This proposed change to fee waiver eligibility would significantly increase the time needed to assist in the almost 90 percent of cases that would have previously used a public benefits-based fee waiver. This increased time per case will ultimately decrease the number of clients assisted in filing for naturalization. Because NCP services focus on people who are low-income, elderly, illiterate, and with limited English skills, this will also mean a decrease in services to these highly vulnerable populations.

[4] https://www.urban.org/research/publication/economic-impact-naturalization-immigrants-and-cities/view/full_report
[5] https://www.migrationpolicy.org/research/economic-value-citizenship
[6] http://publications.unidosus.org/handle/123456789/1123
[7] https://dornsife.usc.edu/csii/citizen-gain/

Second, the New Citizen Campaign clinics would not be able to continue with their current model. At NCC clinics, individual applicants are screened by volunteer immigration attorneys and DOJ-accredited representatives. And those deemed ready to apply are assisted in the completion of their N-400 and the I-912 fee waiver application when needed. Fee waiver assistance has been an ongoing component of the NCC citizenship events since their inception in 2016. Approximately 30% of clinic attendees qualify for a fee waiver, and the vast majority of those establish their eligibility with a public benefits letter. Because this proposed change would require tax transcripts from fee waiver applicants, and because of the difficulty in obtaining tax transcripts outlined above, it will be extremely difficult to serve fee waiver applicants in our one-day clinics.

NCC clinics offer a bridge between services for very low-income applicants, such as those served by the New Citizen Program, and those who can afford a private attorney. Without the ability to serve low-income applicants at the clinics, the program will fail to achieve its foundational goal, and therefore program funding could be at risk. Similarly, the New Citizen Program funding is largely based on service deliverables. When NCP providers spend significantly more time on each case, and service numbers go down, funding is also likely to go down. NCC and NCP funding combined account for 30 percent of OIRA program dollars. By disabling service delivery, this policy change puts at risk the significant investment the City of Seattle has made to naturalization.

II. The USCIS responses to public comments address additional arguments inadequately or not at all.

Making a bad situation even worse, USCIS notes that while Paperwork Reduction Act (PRA) Federal Register Notices "do not rise to the level of notice and comment rule making, they do provide public notice and demonstrate that commenters' concerns have been considered" (Comment Response 3). By brushing aside and failing to respond to the unnecessary burden associated with this changed fee waiver process, USCIS demonstrates that it has indeed not at all considered commenters' concerns.

Demonstrating this lack of concern for the burden that will face alien applicants seeking a fee waiver, USCIS further assumes that a person would not apply for public assistance solely to qualify for a fee waiver. This assumes that USCIS policy and information collection do not affect the decisions of immigrants seeking benefits. Yet, in practice, we have seen clearly that implemented USCIS policies and even leaked policy updates and proposed rule changes do affect the decisions of immigrant applicants. The prime example of this is the decision by many immigrant and refugee families to drop out of public assistance programs over fears of becoming a public charge after the draft version of the 2017 White House public charge executive order leaked to media outlets in February 2017. OIRA received reports from both immigrants living within Seattle and staff from immigrant-serving community-based organizations that immigrants themselves started refusing local and federal benefits that they qualify for, and many also requested case managers to disenroll them from social programs that they are eligible for. This trend has been widely documented by

media outlets.[8] [9] Immigration policy affects the everyday decisions of immigrants and refugees. Assuming otherwise demonstrates a huge gap or a willful disregard in USCIS' understanding of its customers.

If the careless response to the first comment period was not enough, USCIS further clarified its carelessness toward its own constituents and the public by publishing its third notice regarding the fee waiver without responding to both the comments submitted in the previous 30-day comment period ending May 5, 2019 and the calls for more adequate responses to the comments submitted in the initial 60-day period.

III. With this third notice, USCIS now admits the reason for this proposed form change is to reduce the number of fee waivers submitted.

The proposed change to fee waiver eligibility will create a clear burden on applicants who will no longer be able to qualify. What has only become clear with this third notice published June 5, 2019 is that USCIS is aware of this burden and that the agency in fact wants fewer applicants to qualify. In the previous notices and comment responses, USCIS discussed applicants who were well above the poverty line taking advantage of the fee waiver criteria, without showing any evidence that this was the case. Still the agency has provided no evidence of wrongdoing on the part of applicants, but instead reveals the motivation of increasing revenue as the justification for the form change.

The problem with this rationale is that the fee waiver exists to ensure access to immigration benefits and naturalization, especially for vulnerable populations. The standard for fee waiver eligibility is "inability to pay" and is intended to ensure deserving individuals have access to immigration benefits, not based on the revenue goals of USCIS. Ironically, USCIS cites the FY 2016-2017 proposed fee schedule as justification for reviewing the fee waiver guidance, but the 2016-2017 fee schedule intentionally *increased* access for low-income families by creating a reduced fee, or partial fee waiver, for naturalization applicants whose income fell between 150 and 200 percent of the Federal Poverty Guidelines.

Beyond the false pretenses of the previous two notices that claimed this form change was intended to increase efficiency and uniformity in adjudicating fee waivers, USCIS reveals its true motive still without clear justification. The notice states that revenue lost to fee waivers and exemptions has increased from $191 million in FY 2010-2011 to $613 million in FY 2016-2017. These numbers are completely useless in justifying new limits on the fee waiver as they include *exemptions*, which have nothing to do with fee waivers. Fee exemptions include applications for adjustment of status for refugees, and for military

[8] Shapiro, Nina, "As Trump considers penalties, Seattle-area immigrants turn down public benefits they're entitled to claim," Seattle Times, August 12, 2018, https://www.seattletimes.com/seattle-news/legal-immigrants-in-seattle-area-alarmed-over-possible-penalties-for-using-benefits/.

[9] Baumgaertner, Emily , "Spooked by Trump Proposals, Immigrants Abandon Public Nutrition Services," New York Times, March 6, 2018, https://www.nytimes.com/2018/03/06/us/politics/trump-immigrants-public-nutrition-services.html.

personnel applying to naturalize, among many other benefits applications. The information USCIS provides makes it impossible to tell how much revenue is "lost" just to fee waivers as opposed to immigration benefits exempt from fees. Also, during the FY 2010-2011 fee review, USCIS both increased fees and created a standard system for requesting a fee waiver through Form I-912, which would naturally have resulted in more applicants requesting the fee waiver and a subsequent shift in fee generation. Still, by not clarifying what portion of the foregone revenue relates to the fee waiver versus fee exemptions, USCIS appears to be overstating the "problem" of fee waivers. By drawing a false comparison, USCIS points to a lack of justification for even this revenue loss rationale.

IV. The Federal Poverty Guidelines are inadequate.

The Federal Poverty Guidelines are an inadequate measure of the standard set for USCIS fee waiver adjudication by CFR 103.7(c)(2) as "inability to pay." USCIS does not offer any information as to why the inability to pay as the basis of demonstrating fee waiver eligibility must equate to income below 150 percent of the Federal Poverty Guidelines. In several responses to comments published on April 5, 2019, the agency asserts that fee waiver adjudication is uneven because some public benefits recipients earn above 150 percent of the poverty line, but does not address the fact that in many jurisdictions, earning 150 percent of the poverty guidelines would not allow a household to afford rent, food, and other basic survival needs. Many studies indicate that the Federal Poverty Guidelines are wholly insufficient in accounting for a family's ability to afford basic needs, and several federal agencies rely on more thorough and localized measures of poverty, including the Department of Housing and Urban Development, discussed below.

Last year, the National Low-Income Housing Coalition (NLIHC) released their annual Out of Reach report showing that federal minimum wage would not cover rent anywhere in the United States.[10] More importantly, it shows that nationally, a family would need to earn $22.10 an hour to afford a modest two-bedroom apartment. Assuming this rate applied to full-time work, annual earnings to afford a two-bedroom apartment would be $45,968.[11] For a family of four, this would be well above the USCIS fee waiver standard of $37,650 of 150 percent of the federal poverty guidelines. It is also above the threshold for a family of five. A family of five that is unable to afford a two-bedroom apartment can hardly be expected to come up with hundreds to thousands of dollars in USCIS filing fees.

The Massachusetts Institute of Technology has developed a Living Wage Calculator to determine the minimum that families need to spend on food, childcare, health insurance, housing, transportation, and other basic necessities across a range of different family structures and localities.[12] This, too, reveals

[10] https://www.cbsnews.com/news/minimum-wage-doesnt-cover-the-rent-anywhere-in-the-u-s/?fbclid=IwAR2eKx3fRzsvJHwZHaaob_Lj6FLjbvXu9gDI7IDeTpU0n7d2-knJf8rkpEg
[11] http://nlihc.org/oor
[12] Massachusetts Institute of Technology, Living Wage Calculator, http://livingwage.mit.edu/.

significant disparities in cost of living. Whereas the required annual income (before taxes) for a family of two adults and two children with one working adult is $50,433 in Mississippi, it is $64,559 in King County, Washington, where Seattle is located. In Washington state, Basic Food (the state's SNAP, or food stamps, program) is available to anyone earning more than 200% of the Federal Poverty Guidelines, reflecting the higher cost of living in this state.[13] This means a family of four is eligible for nutrition assistance if it earns up to $51,000—even though the family would not be "poor" under the Federal Poverty Guidelines.

Leaders from the USCIS Seattle Field Office have used the high cost of living in the Seattle area as a reason for that office's chronic understaffing and hence that office's ongoing adjudication delays and backlogs. They have stated that the salary of USCIS officers is insufficient to meet the high cost of living in the area, and therefore the office has difficulty hiring staff to adjudicate applications.[14] Surely, if USCIS officer salaries are not enough to afford living in a major metropolitan area, an applicant with earnings slightly above 150 percent of the poverty line living in a high-cost area should be justified in demonstrating their inability to pay with an easily accessible proof of means-tested benefits, such as a simple letter from a benefits-granting agency.

These wide discrepancies in the cost of living results in Federal Poverty Guidelines that do not accurately reflect the reality on the ground for many U.S. residents. For instance, according to data from the U.S. Department of Housing and Urban Development (HUD), the median income for a family of four in the Seattle metropolitan area in 2019 is $108,600. Based on this median income, HUD (which does not rely on the Poverty Guidelines) considers a family of four earning less than $88,250 to be "low income" and potentially eligible for rental assistance. But according to the Federal Poverty Guidelines, that family is not poor, because its income is more than 300% of the Federal Poverty Guidelines and significantly more than the national median income. Of course, the fact that a family living in a high-cost area makes more than 300% of the static Federal Poverty Guidelines does not mean they can afford housing where they live—a fact HUD recognizes and has adjusted for. The federal government has recognized that these discrepancies limit the usefulness of the 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.

USCIS itself also proposes that this standard of 150 percent of the Federal Poverty Guidelines is insufficient to prove financial stability. The current standard for determining an intending immigrant would not become a public charge is an affidavit of support filed on behalf of the immigrant by someone earning at least 125 percent of the poverty guidelines. Yet in October 2018, USCIS proposed changing the public

[13] Washington State Department of Social and Health Services, Washington Basic Food Program, https://www.dshs.wa.gov/sites/default/files/ESA/csd/documents/Basic%20Food_Q_and_A.pdf.
[14] U.S. Citizenship and Immigration Services District 20 Quarterly Stakeholders Meeting, December 6, 2018, USCIS Seattle Field Office, 12500 Tukwila International Boulevard, Seattle, Washington 98168.

charge determination standards through another NPRM.[15] One of the altered criteria was to use an annual income of 250 percent or above the federal poverty level as a positive factor in someone's ability to avoid a public charge determination, while income below 125 percent of the line is a negative factor. USCIS maintains that a household below 125 percent of the poverty line is unable to prove financial soundness, but someone above 150 percent of the poverty level is too wealthy to warrant assistance in paying fees that can add up to thousands of dollars.

The current federal administration is even aiming to change the way the Federal Poverty Guidelines are measured. On May 7, 2019, the Office of Management and Budget (OMB) published notice of its intent to recalculate the criteria for the Official Poverty Measure, from which Federal Poverty Guidelines are drawn (FR Doc. 2019-09106). It is paradoxical that USCIS would bear down on its use of the poverty guidelines during a time when counterparts at OMB highlighting the flaws in the measurement of its foundation, the Official Poverty Measure.

V. This form change would create huge additional inefficiencies and is a waste of resources for the federal government itself.

The proposed change to I-912 and fee waiver eligibility would cause a huge waste of government resources. In the April 5th response, USCIS does not respond to this proposal being a waste of government resources, but instead responds to the argument it would waste taxpayer dollars. They assure that the agency, including fee waiver adjudication, is funded by application filing fee income. The argument that USCIS does not waste taxpayer money misses the point that the proposal would waste already limited government resources, including local agency resources and USCIS income generated from fees.

First, USCIS's proposal to re-adjudicate an applicant's level of income after the local benefits-granting agency has already done this is wasteful and unnecessary. USCIS' response to Comment 5 states that the fee waiver "request is distinct from that of other benefits granting agencies," but does not give any reasoning as to why. The law governing fee waivers requires the person demonstrate their "inability to pay" (CFR 103.7(c)(2)). USCIS gives no argument to understand how a person's inability to pay for food, housing, or electricity is so distinct from their inability to pay for an immigration benefit.

Second, the April 5, 2019 response to public comments asserts that fee waiver adjudication is funded by income from other application fees, and that applicants who pay fees should not pay higher fees to offset the costs of fee waiver-based applications. This again is part of the agency's underlying argument that immigrants who request fee waivers are leeching off those who pay filing fees. The agency doubles down on this argument with the June 5th notice to the Federal Register by clarifying the justification for the change is to prevent lost revenue from eligible applicants requesting the fee waiver. Yet the Department of Homeland Security (DHS) has little problem expending fee income on completely unrelated programming.

[15] Inadmissibility on Public Charge Grounds, Notice of Proposed Rulemaking, 83 Fed. Reg. 51114, DHS Docket No. USCIS-2010-0012.

DHS's recent budget proposal actually plans to divert filing fee revenue away from adjudication. The proposed DHS FY 19 budget identifies a transfer of $207.6 million from the Immigration Examination Fee Account (IEFA) to fund ICE enforcement initiatives "consistent with the Administration's Executive Orders," such as the border wall and increasing the number of detention beds.[16] This transfer of huge amounts of fee revenue does not illustrate USCIS's expressed concern for fee-paying applicants.

Third, USCIS does not address the increased resource burden of requiring each individual to file their own I-912, where previously household members could file a single joint application to waive fees on some application types. In the April 5th response to Comment 15, USCIS states that less than 10 percent of I-912 filings were for multiple members of the same household using the same form. While no year is cited for this rate, the USCIS response to Comment 4 cites that for FY 2017 the agency approved 588,723 fee waiver applications that represented 86 percent of fee waiver filings. This tells us that the total I-912 filings for FY 2017 was 684,572. If we follow the statement that approximately 10 percent were filed using one form for multiple household members and using FY 2017 numbers, this means there would be at the very least an increase of 68,457 I-912s should this proposed rule be enacted. A 10 percent increase in adjudications is objectively a significant increase in the use of government resources. And the 10 percent increase assumes an average household size of two for those previously filing together on one fee waiver. If the average household size is three, the proposed change would create 136,914 more filings annually, and the increase in USCIS adjudication resources only goes up if the average household size is larger. USCIS does not address this increased resource burden of at least 10 percent more fee waiver adjudications through this proposed change.

Finally, USCIS' method for announcing and proposing this change has been wholly inefficient. Initiating three rounds of public comment in a dizzying use of the Paperwork Reduction Act, is at best inefficient and at worst an awkward attempt to avoid the repercussions of failing to give proper public notice. The first notice received close to 1,200 comments, and the second round received at least hundreds more, sent directly to the Office of Management and Budget via email. Now we are asked to respond to a third notice, without even an attempt at response to the second round of comments. This has constituted a waste of time for the public, especially the stakeholders who will be harmed by this change, and the government staffers who are charged with responding to their public comments. Moreover, the agency did not publish until a third notice their true rationale for this change, namely, to recover more revenue for the agency by denying more fee waivers. The public has spent time and energy responding to two notices that did not even include the actual intent of this change. The use of agency time and staff toward this roundabout endeavor is wasteful and inefficient.

[16] From the proposed budget (https://www.dhs.gov/sites/default/files/publications/DHS%20BIB%202019.pdf) providing the this context on the Immigration Examinations Fee Account (IEFA): "USCIS collects fees to recover the full cost of providing immigration adjudications and naturalization services. This includes the cost of investigatory work necessary to adjudicate applications and petitions, including work performed after an adjudication decision has been rendered by USCIS."

The City of Seattle continues to strongly oppose the proposed rule to modify the Form I-912, Request for Fee Waiver.

The City of Seattle opposes the proposed changes to the Form I-912 because it would cause additional significant obstacles for individuals applying, and otherwise eligible for, immigration benefits. The rule change will not improve efficiency or reduce costs for the U.S. government, and will likely cause significant additional costs and extended processing delays. Both the initial proposed form change and the USCIS response to the 1,198 comments filed to the Federal Register by community members and stakeholders failed to demonstrate the upside for the government.

More importantly, the rule change will directly harm vulnerable people, including low-income immigrants, which include those who are elderly and/or disabled. Nonprofit organizations charged with assisting low-income immigrants will be overwhelmed by the additional time burden imposed by the rule change and may struggle to stay afloat. This rule change would cause irrevocable damage to the City of Seattle's New Citizen Campaign and New Citizen Program, our community partners, and the vulnerable clients we serve.

Thank you for the opportunity to submit comments on the proposed rulemaking. Please do not hesitate to contact Christina Guros at christina.guros@seattle.gov for comments or clarifications regarding this response.

Sincerely,

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