



Billing Code 9111-97

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0116]

Agency Information Collection Activities; Revision of a Currently Approved Collection:

Request for Fee Waiver; Exemptions

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The notice is inviting additional public comments for 30-days. The purpose of this notice is to inform the public about the policy changes being effectuated by the revision of the USCIS Request for Fee Waiver, expound on the reasons for the change, and request public comments on the additional points raised in this notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments.

Comments are encouraged and will be accepted until [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via e-mail at dhsdeskofficer@omb.eop.gov. All submissions received must include the agency name and the OMB Control Number 1615-0116 in the subject line.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, 20 Massachusetts Avenue, NW., Washington, DC 20529-2140, Telephone number (202) 272-8377 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at <http://www.uscis.gov>, or call the USCIS National Customer Service Center at (800) 375-5283; TTY (800) 767-1833.

SUPPLEMENTARY INFORMATION:

Background:

USCIS is primarily funded by application and petition fees. Under INA 286(m), 8 U.S.C. 1356(m), DHS has the authority to establish the fees it charges for immigration and naturalization services to recover the full costs of such services, including those provided without charge, and to recover costs associated with the administration of the fees collected. Therefore, the fees are set at a level that is intended to recover the full cost of USCIS operations.

Currently, USCIS may waive the fee for certain immigration benefit requests when the individual requesting the benefit is unable to pay the fee. *See* 8 CFR 103.7(c). To request a fee waiver, the individual must submit a written waiver request for permission to have his or her benefit request processed without payment. Under the current regulation, the waiver request must state the person's belief that he or she is entitled to or deserving of the benefit requested

and the reasons for his or her inability to pay and include evidence to support the reasons indicated. *See* 8 CFR 103.7(c)(2). The statute authorizing USCIS to establish fees does not specifically mention fee waivers and fee exemptions for any type of applicant or group, or any criteria for fee waivers. The statute does state that fees are to be set at a level that will recover the full costs of adjudication and naturalization services provided “including the costs of similar services provided without charge to asylum applicants or other immigrants.” INA section 286(m), 8 U.S.C. 1356(m). However, DHS must permit certain applicants to apply for fee waivers. INA section 245(l)(7), 8 U.S.C. 1255(l)(7).

In 2011, USCIS issued policy guidance to streamline fee waiver adjudications. *See* Policy Memorandum, PM-602-0011.1, *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 (Mar. 13, 2011) (“Fee Waiver Policy”). The Fee Waiver Policy interpreted 8 CFR 103.7(c) to provide acceptable measures of income, establish the procedures individuals must follow, and outline the documentation that may demonstrate they are unable to pay a fee. In June 2011, USCIS issued Form I-912, Request for Fee Waiver, as a standardized form with instructions to request a fee waiver in accordance with the Fee Waiver Policy. Prior to the 2011 Fee Waiver Policy, USCIS engaged in a holistic analysis of the individual’s finances to determine inability to pay, which burdened USCIS officers with a preliminary financial analysis, that preceded their primary role of determining if the applicant met the requirements for the benefit requested. The 2011 Fee Waiver Policy established a streamlined process where if the individual provided proof of a means-tested benefit, the fee waiver will normally be approved for forms listed in 8 CFR 103.7(c)(3) for applicants who at time of filing the fee waiver request with the benefit application:

- Were receiving a means-tested benefit;
- Had a household income at or below 150 percent of the Federal Poverty Guidelines (FPG); or
- Were experiencing extreme financial hardship such as unexpected medical bills or emergencies.

Proposed changes:

USCIS is removing the means-tested benefit as a criterion in its fee waiver request determinations, requiring the submission of Form I-912 to request a fee waiver, and clarifying what the evidentiary that will be considered for a fee waiver. The proposed guidance would provide that a person may be eligible to receive a fee waiver if he or she:

- Has a household income at or below 150 percent of the FPG; or
- Is experiencing extreme financial hardship such as unexpected medical bills or emergencies.

USCIS is proposing to rescind the March 13, 2011 policy and issue new guidance clarifying what documentation may be submitted to demonstrate an individual's inability to pay a fee when requesting a fee waiver. The applications and petitions that are eligible for a fee waiver are provided in 8 CFR 103.7(c)(3) and will not be changed by this form and policy change.

USCIS notes that the proposed policy also complies with section 1238 of the Federal Aviation Reauthorization Act of 2018. Pub. L. 115-254 (Oct. 5, 2018). That law provides that the President, in consultation with the Governor of a State, may waive certain fees for an individual or household who lives in a federally declared disaster area, including the following USCIS fees: Form I-90; Form I-193; Form I-765; Form N-300; Form N-565; and the biometric

services fee. DHS plans to carry out this permissive authority through the USCIS Director's exercise of his or her discretion to provide a specific class of fee waivers for emergency and disaster relief. 8 CFR 103.7(d).

Reasons for the changes:

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 the FY 2016/2017 fee rule, DHS noted that the estimated annual forgone revenue from fee waivers and exemptions has increased markedly, from \$191 million in the FY 2010/2011 fee review to \$613 million in the FY 2016/2017 fee review. *See* 81 FR 26922 and 73307. In the FY 2016/2017 proposed rule, DHS provided notice that in the future it may revisit the USCIS fee waiver guidance with respect to what constitutes inability to pay under 8 CFR 103.7(c). *See* 81 FR 26922.

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. Consequently, a fee waiver may be granted for one person who has a certain level of income in one state, but denied for a person with that same income who lives in another state. Therefore, USCIS has determined that fee waivers should not be based on the receipt of a means tested benefit, and the revised form will not permit a fee waiver based on receipt of a means- tested benefit. It will retain the poverty-guideline threshold and financial hardship criteria.

Administrative Procedure Act (APA) and Paperwork Reduction Act (PRA)

USCIS has published two 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). USCIS is in the process of responding to the comments received, but has decided to provide this additional notice and request for comments to clarify the nature of the proposed policy changes.

The current USCIS policy and the Form I-912 provide the procedures for requesting a waiver of USCIS fees based on 8 CFR 103.7(c), which provides that the party requesting the benefit is unable to pay the prescribed fee, and a fee waiver is consistent with the status or benefit sought. The APA excepts rules of agency organization, procedure or practice from notice and comment requirements. 5 U.S.C. 553(b)(A). USCIS issued its 2011 Fee Waiver Policy and Form I-912 to explain and provide instructions to adjudicators but did not create legally binding rights, obligations, or effect a change in the regulations. In addition, the USCIS form instructions for Form I-912 established procedural requirements for requesting a fee waiver. The form instructions established application procedures but did not change the substantive standards by which USCIS evaluated applications for immigration benefit requests, just the procedural steps for such requests. An agency is not required to use the APA's notice-and-comment procedures to issue an interpretive or procedural rule that amends or repeals an interpretive¹ or procedural rule.²

USCIS has reviewed this policy change and determined that it will not abrogate or adversely affect any substantive rights of the affected parties. The 2011 Fee Waiver Policy provided guidelines for adjudication of requests and provided that we would accept a means

¹ *Perez v. Mortgage Bankers Ass'n*, 135 S.Ct. 1199 (2015).

² *James v. Hurson Associates, Inc. v. Glickman*, 229 F.3d 277 (D.C. Cir. 2000);

tested benefit as evidence of inability to pay as required by 8 CFR 103.7(c)(2). With respect to the proposed policy change, USCIS acknowledges that a person who is receiving a means tested benefit in a state where the income level for granting the receipt of a means tested benefit is above 150 percent of the FPG (the new maximum threshold for a fee waiver), may no longer be able to have their USCIS fees waived simply by using receipt of that benefit as evidence. However, USCIS does not think that by having operated under that policy results in individuals who happen to receive a means tested benefit from a government agency inuring to a *right* to receive adjudication of their immigration benefit request for free.

Additionally, USCIS acknowledges that, while an agency can change its interpretation of a regulation at different times in its history, the interpretative changes can create no unfair surprise.³ As stated above, USCIS acknowledges 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. USCIS has, however, analyzed the potential for and taken into account serious reliance interests that may be engendered by the 2011 policies. USCIS has determined that potential applicants cannot reasonably be determined to have taken an action in detrimental reliance on USCIS continuing its 2011 policy for providing free services. Regardless of USCIS's past use of receipt of means tested benefits as a means for determining that an applicant for immigration benefits is unable to pay the fee for his or her immigration benefit request, USCIS has determined that an applicant is unlikely to have incurred costs or been harmed based on relying on USCIS continuing that policy. Each person's decision to apply for, and eligibility to receive, a means tested benefit would be based on the need for that benefit and not because the

³ *Long Island Care at Home Ltd. v. Coke*, 551 U.S. 158, 171 (2007); *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142 (2012).

person can use receipt of the benefit to avoid paying a USCIS immigration benefit request fee. To the extent that a person is in the process of completing and filing a request, with this notice USCIS will have provided three public notices of the impending policy and procedure change. In addition, to eliminate any impact on an applicant who is currently working on, researching, and gathering necessary evidence for an immigration benefit and planning to request a fee waiver based on receipt of a means tested benefit, USCIS will provide sufficient advance notice and transition period before the new version of Form I-912 will be a requirement for requesting a fee waiver, to permit applications that are in process to be submitted under the previous policy. To the extent that applicants who are not yet working on, researching, and gathering necessary evidence for an application may no longer receive a fee waiver after this change, USCIS has determined that the need to reduce annual forgone revenue from fee waivers and approve fee waivers using consistent income levels is still justified and necessary regardless of those affected parties being required to pay the prescribed fees. USCIS welcomes public comments on all of the effects of this change in policy.

Comments:

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS-2010-0008 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

- (1) Evaluate whether the proposed 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 proposed 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 this Information Collection:

- (1) Type of Information Collection Request: Revision of a Currently Approved Collection.
- (2) Title of the Form/Collection: Request for Fee Waiver.
- (3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: I-912; USCIS.
- (4) Affected public who will be asked or required to respond, as well as a brief abstract:
Primary: Individuals or households. USCIS uses the data collected on this form to verify that the applicant is unable to pay for the immigration benefit being requested. USCIS will consider waiving a fee for an application or petition when the applicant or petitioner clearly demonstrates that he or she is unable to pay the fee. Form I-912 standardizes the collection and analysis of statements and supporting documentation provided by the applicant with the fee waiver request. Form I-912 also 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. Officers evaluate all factors, circumstances, and evidence supplied in support of a fee waiver request when making a final determination. Each case is unique

and is considered on its own merits. If the fee waiver is granted, the application will be processed. If the fee waiver is not granted, USCIS will notify the applicant and instruct him or her to file a new application with the appropriate fee.

- (5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of respondents for the information collection I-912 is 350,000 and the estimated hour burden per response is 1.17 hours; for the information collection DACA Exemptions the estimated total number of respondents is 108 and the estimated hour burden per response is 1.17 hours; for the information collection 8 CFR 103.7(d) Director's exception request the estimated total number of respondents is 20 and the estimated hour burden per response is 1.17 hours.
- (6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection is 409,650 hours.
- (7) An estimate of the total public burden (in cost) associated with the collection: The estimated total annual cost burden associated with this collection of information is \$1,312,980.

L. Francis Cissna,

Director,

U.S. Citizenship and Immigration Services,

Department of Homeland Security.

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