



THE CITY OF NEW YORK
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November 27, 2018

Samantha Deshommes
Chief, Regulatory Coordination Division
Office of Policy and Strategy
U.S. Citizenship and Immigration Services
Department of Homeland Security
20 Massachusetts Avenue NW
Washington, DC 20529-2140

Submitted via Federal eRulemaking Portal

**Re: Request for Comments: Agency Information Collection Activities;
Revision of a Currently Approved Collection: Request for Fee Waiver; Exemptions
OMB Control No. 1615-0116; e-Docket ID No. USCIS-2010-0008**

Dear Chief Deshommes:

The City of New York (“the City”) appreciates the opportunity to comment on the proposed revision of the currently approved collection of Request for Fee Waiver; Exemptions, published in the Federal Register on September 28, 2018. The New York City Mayor’s Office of Immigrant Affairs (“MOIA”) and Human Resources Administration/Department of Social Services (“HRA/DSS”) present this comment as the lead offices coordinating immigration legal services and administering means-tested benefits programs for immigrant New Yorkers. On behalf of the City, we oppose the proposed revision.

Civic participation by all New Yorkers, including immigrant New Yorkers, is a fundamental priority under Mayor de Blasio’s Administration. The proposed changes would burden lawful permanent residents seeking naturalization, seeking to replace their documents, or applying for other immigration benefits. The proposed changes would disproportionately harm vulnerable immigrants such as seniors and persons with disabilities. The proposed changes would also result in significant additional burden on communities, local agencies, and service providers including providers funded by the City. The proposed changes would, without sufficient justification, make the application process more resource-intensive and inefficient for applicants and those serving them, and will also likely have the effect of preventing many individuals, who are otherwise

eligible for naturalization or another immigrant benefits, from submitting an application in the first place. The current guidelines allowing eligibility for a fee waiver based on receipt of a means-tested benefit is reasonable and the most straightforward, reliable indicator of an applicant's inability to pay a filing fee. The proposed changes therefore frustrate the purpose and intent of the fee waiver regulation at 8 CFR 103.7(c) and, as currently proposed, should not become final. **The City strongly encourages U.S. Citizenship and Immigration Services (USCIS) to maintain the means-tested benefits category and the current fee waiver guidelines set forth in Policy Memorandum PM-602-0011.1, published March 13, 2011, and to enhance the accessibility of fee waivers by accepting additional types of documents as evidence of income.**

New York City has a vested interest in supporting immigrant access to naturalization.

New York City is home to over 3.2 million foreign-born New Yorkers – nearly 40% of the city's total population. Of this, an estimated 660,000 are lawful permanent residents eligible for naturalization, most of whom are long-time city residents with deep ties across the city's five boroughs.¹

Recognizing that New York is not only a city of immigrants, but a city that thrives because of our immigrant communities, this mayoral Administration has invested over \$30 million for a range of immigration legal services programming, including funding for the City's flagship naturalization program, NYCitizenship. Through NYCitizenship, individuals receive comprehensive legal screenings to determine eligibility for naturalization and full legal representation in filing applications with USCIS. The program also offers these services targeted to vulnerable populations including seniors and those facing health barriers. All eligible individuals also receive legal assistance with full and partial fee waivers as well as medical disability waiver applications. Additionally, clients are connected to free and confidential financial counseling. Since its launch in 2016, over 17,000 individuals have been reached through the program.

Programs like NYCitizenship are key to unlocking the full potential of our immigrant communities. Naturalization is a powerful tool to promote income security as well as more robust voter engagement. Our human and social services programs are designed to uplift New Yorkers facing hardship and disrupt the factors that lead to poverty. According to a recent study of naturalization-eligible immigrants in 21 cities, the economic benefits of naturalization are clear. New citizens see individual annual earnings increase by an average of 8.9 percent, or \$3,200; the employment rate among this population rises 2.2 percentage points; and homeownership in this group increases 6.3 percentage points.²

¹ New York City Mayor's Office of Immigrant Affairs Annual Report, "State of our Immigrant City Mar. 2018, pg. 9, available at https://www1.nyc.gov/assets/immigrants/downloads/pdf/moia_annual_report_2018_final.pdf.

² Urban Institute Research Report, "The Economic Impact of Naturalization on Immigrants and Cities, Dec. 2015, p. VI, available at <https://www.urban.org/sites/default/files/publication/76241/2000549-The-Economic-Impact-of-Naturalization-on-Immigrants-and-Cities.pdf>

The proposed changes will create barriers to citizenship and other immigration benefits by placing a burden on low-income individuals, service providers, and local agencies in accessing documents to support fee waivers.

The proposed changes to the fee waiver eligibility criteria and accepted forms of evidence create additional burdens to immigrants applying for immigration benefits that will help them realize greater civic, social, and economic integration. The most concerning aspects of the proposed changes include:

- Eliminating receipt of a means-tested benefit as a basis for fee waiver eligibility;
- Limiting the types of documentary evidence accepted for proof of income at or below 150% of the federal poverty guidelines and financial hardship to documents issued by the Internal Revenue Service (“IRS”) and Social Security Administration, like tax transcripts, verification of non-filing, or a Form 1099; and
- Requiring exclusive use of Form I-912 for an applicant to request a fee waiver.

By eliminating the means-tested benefits eligibility category, the proposed changes will place an additional burden on low-income naturalization applicants and others to procure official IRS tax transcripts to demonstrate their eligibility for a fee waiver. Through careful consideration of immigrant-supporting policies and procedures, HRA/DSS has made it easier for foreign-born immigration benefits applicants to obtain evidence of receipt of means-tested benefits.³ Applicants may have limited English proficiency, may not be digital natives or otherwise lack computer access to request tax transcripts online, and may have disabilities or impairments that hinder their access to IRS documents in ways that their access to proof of receipt of means-tested benefits is not hindered.

Like USCIS’ programs including the naturalization information sessions at local libraries and the Citizenship and Assimilation Grant Program, NYCitizenship relies on an outreach strategy to encourage eligible lawful permanent residents to naturalize as well as efficient and effective delivery of legal services to serve as many eligible lawful permanent residents as possible. MOIA, HRA/DSS, and service delivery partners depend on simple and reliable messaging and clear guidance to encourage potential applicants to participate in the program. One of the reliable messages that the current fee waiver guidelines allow for is that the program provides free legal services for lawful permanent residents who likely qualify for a means-tested benefit fee waiver. The existence of this particular pathway to a fee waiver has allowed outreach staff to build trust with potential applicants, especially vulnerable immigrant clients, who may otherwise be overwhelmed and discouraged from applying for naturalization. In addition, the reliability, accessibility, and streamlined adjudication of the means-tested benefit fee waiver contributes to overall efficiencies in the program and generates positive outcomes for clients. The following case study from the NYCitizenship program illustrates how the current fee waiver scheme is integrated into overall service provision for vulnerable New Yorkers:

³ HRA allows clients to access evidence of receipt of a means-tested benefit in several ways including in person at local SNAP and Medicaid offices located throughout New York City, over the phone through HRA’s centralized hotline – HRA Infoline, as well as through HRA Access, which is a secure, customer facing internet portal.

Ricardo⁴ is a senior citizen who was unable to find work due to an impeding injury. Besides a small amount of savings, he was supported by his children. He frequented two local food pantries and often was unable to travel to a senior center of which he is a member because he could not afford transportation. Through the NYCitizenship program, he met with an outreach counselor who was able to screen him for public benefits. He was approved to receive monthly Supplemental Nutrition Assistance Program (“SNAP”) assistance through HRA/DSS, which benefits him and his family greatly. Ricardo was also referred to the New York City Department for the Aging’s Senior Employment Services office and has been working diligently with a case worker to find adequate employment. He is now likely to receive employment at a local supermarket chain. NYCitizenship was also able to submit Ricardo’s naturalization application with a means-tested benefit fee waiver that included documentation of his SNAP benefits. Ricardo is now a U.S. citizen and is incredibly relieved to have the opportunity to apply for a job.

Ricardo is just one of the thousands of vulnerable immigrants who benefit from the investment the City has made in services and programs that not only improve their immigration status, but also help place them on an upward economic trajectory. Through the NYCitizenship program, we have identified that multiple follow-up appointments and requesting additional documents makes it more likely that a client will not continue with their naturalization application. Had the proposed fee waiver changes been in place, Ricardo, as a senior and person with a disability or impairment, would not have been able to easily produce tax transcripts, verification of non-filing, or even Social Security documents to submit with his fee waiver. The time and resources needed to gather sufficient evidence for income or financial hardship-based fee waivers would have delayed Ricardo from seeking employment assistance thereby diminishing his quality of life and causing further dependency on his family for support. The proposed fee waiver changes would have also been resource-intensive for the outreach counselor and legal staff assisting Ricardo, who would need to dedicate more time to each individual case and reduce the number of people assisted overall. Moreover, the likelihood that Ricardo’s income or hardship-based fee waiver would be accepted is not as clear and reliable as it would be with a means-tested benefit fee waiver. The delay in preparing the fee waiver and high likelihood of rejection of the more burdensome income or hardship-based fee waiver present a significant barrier to the outreach and service delivery components of the NYCitizenship program, resulting in diminished opportunities for clients like Ricardo engaging with the program.

Benefits administered through local government agencies are tools to fight poverty and income inequality. Eliminating the means-tested benefit eligibility category will also have a detrimental impact on HRA/DSS clients who will face decreased stability and economic insecurity. If an applicant is unable to reliably count on receiving a fee waiver, and does not have access to additional documents that USCIS now proposes to require, they will find it difficult to provide evidence of their immigration status necessary to access essential benefits. For someone facing a

⁴ Client’s name and other information has been modified to protect client’s privacy.

lack of permanent housing, a catastrophe in their life, or an unstable situation, it can be incredibly difficult to produce documents such as tax transcripts in order to prove eligibility for a fee waiver under the proposed changes. These benefits applicants would also be unable to afford the high filing fees to replace lost or expired documents including green cards (\$540), replacement naturalization or citizenship certificates (\$555), and employment authorization documents (\$495). This proposal thus undermines HRA/DSS's mission to promote stability and support New Yorkers in realizing self-sufficiency.

The current guidelines allowing eligibility for a fee waiver based on receipt of a means-tested benefit is reasonable and the most straightforward, reliable indicator of an applicant's inability to pay a filing fee.

USCIS states that the proposed change to eliminate the means-tested benefit eligibility category is justified because the agency “has found that 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.”⁵ However, such variability is appropriate in light of the inconsistent cost of living across states. Indeed, the IRS recognizes variability in cost of living and income levels between states in their Collection of Financial Standards, which is used to determine a taxpayer's ability to pay a delinquent tax liability. For example, under the IRS' standard for housing and utilities, it costs New York City residents an average of \$2465 per month for basic housing needs. In comparison, housing costs in Atlanta are a third less than in New York City (\$1782/month), while housing costs in Houston are less than half that of New York City (\$1095/month).⁶ Evidence of receipt of a means-tested benefit therefore accounts for such differences and thus serves as a consistent indicator that an applicant faces financial difficulty and lacks the income or resources sufficient to meet at least one basic living necessity. Accordingly, this evidence should also demonstrate inability to pay an immigration application filing fee warranting the grant of a fee waiver.

The notice of proposed rulemaking does not provide a justified conclusion, clear rationale, or data to support the elimination of the means-tested benefits category and thus has failed to provide sufficient notice to justify the proposed rule change. Evidence of a means-tested benefit produced by a local benefits-granting authority is by far the most common and straightforward way to demonstrate fee waiver eligibility. Applicants can readily access documentation to demonstrate receipt of the benefit by providing a copy of the official eligibility letter from the local government agency administering the benefit. Despite differences in means testing across states, USCIS has never produced data that high income earners with ability to pay fees avail themselves of the fee waiver or that the differences in means-testing changes the result of whether an applicant can demonstrate ability to pay a filing fee. In contrast, USCIS adjudicators can clearly identify and process a simple benefits letter for the purposes of granting a fee waiver. USCIS provides no information or data to support the conclusion that eliminating the means-tested benefits category would in any way improve the fee waiver process for either adjudicators

⁵ NPRM USCIS-2010-0008 at 49121

⁶ IRS Collection Financial Standards, Mar. 26, 2018, available at <https://www.irs.gov/businesses/small-businesses-self-employed/collection-financial-standards>

or applicants—no evidence that it would standardize, streamline, expedite, or otherwise result in operational efficiencies or decreased burden time.

The proposed changes are inconsistent with the existing fee waiver regulations, frustrate the purpose and intent of the existing regulations, and are not supported by evidence or data.

The regulation governing the ability to apply for a fee waiver at 8 CFR 103.7(c), which USCIS does not propose to change, allows an applicant to request a fee waiver for certain eligible applications if they submit a written request for permission to have their application processed. This written request must state the reasons the applicant believes they are entitled to or deserving of the waiver as well as the reason for inability to pay the fee, and include evidence to support the reason indicated.⁷ As a threshold matter, the regulation plainly allows an applicant to submit any written request for a fee waiver so long as the request contains the relevant information stated. The proposed rule change requiring the exclusive use of form I-912 clearly contradicts the regulation's intent to retain flexibility in the format used to request a fee waiver; therefore applicants should continue to be allowed to submit self-generated requests for fee waivers

The notice of proposed rulemaking does not provide any data to support the decision to limit the types of documents that can be used to evidence income below 150% of the federal poverty guidelines to IRS tax transcripts or Social Security 1099s. This limitation runs counter to the plain language of the regulations at 8 CFR 103.7(c)(2), which does not, with good reason, impose any limitation in the type of document that an applicant can submit to demonstrate inability to pay. Of note, the regulation does not specifically require any evidence of income to demonstrate inability to pay, let alone indicate that such a level of particularity in documentation like a tax transcript is required.⁸

The regulations at 8 CFR 103.7(c)(1)(i), also make clear that the determining eligibility factor for a fee waiver is an assessment of the applicant's inability to pay a prescribed filing fee. Further, under 8 CFR 103.7(c)(2), each request requires an individual assessment of the information and documents provided by the applicant to demonstrate this inability to pay a prescribed fee. Thus the existing fee waiver regulations which are not subject to potential amendment do not, with good reason, impose a standard income limit as the determining eligibility factor, in recognition that ability or inability to pay a prescribed fee depends on individualized factors that cannot be captured solely by a bright-line income test. This concept is clearly articulated under the current fee waiver guidelines in USCIS PM-602-0011.1, where an applicant can demonstrate inability to pay a fee through either receipt of a means-tested benefit, or income below 150% of the federal

⁷ 8 CFR 103.7(c)(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.

⁸ To note, the proposed changes implicitly adds the IRS, an agency with exclusive control over the proposed new documentary evidence requirements like tax transcripts, as an intermediary authority in the fee waiver request process. This proposed change may, in practice, run counter to the intent articulated in 8 CFR 103.7(c)(2), where the requestor must submit a written request for permission to waive a filing fee; a transaction between the requestor and USCIS, without an additional authority involved in the process.

poverty guidelines, or financial hardship (“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.”).⁹

USCIS should not limit the types of documents to evidence of income to IRS tax documents and should instead enhance accessibility of fee waivers by accepting means-tested benefits documents as evidence of income

USCIS should also accept evidence of receipt of means-tested benefits provided by local benefits granting agencies as evidence of income, where the document contains income and resources calculations. Local and state authorities like HRA/DSS, engage in a thorough review of records, income, and resources to determine whether an applicant qualifies for the means-tested benefit sought. HRA/DSS engages in an extremely thorough and verified process before issuing any benefits. Clients are asked to attest to their earned and unearned income, bank accounts, additional resources, household size, residence, job status, and any other relevant expenses. Those attestations are verified through a variety of databases that the agency relies upon. An example of HRA/DSS’ eligibility criteria and documentation requirements for determination of SNAP eligibility is submitted as Attachment 2 to this comment for reference.

HRA/DSS produces documentation of receipt of means-tested benefits that includes a robust and detailed income calculation that clearly lays out the information used to determine benefits eligibility. Based on the agency’s commitment to and understanding of the power of poverty alleviation tools, HRA/DSS has devoted significant time and resources to help clients obtain fee waivers based on their receipt of a means-tested benefit. A client can request a document at a local benefits center, through an automated phone line, by calling the general information line, or online. Most recently, HRA/DSS expanded the online option to provide two different kinds of documents: one that was immediately generated and another more detailed document that was generated within 24 hours. All of these have been approved by USCIS as sufficient documentation to prove receipt of a means-tested benefit to receive a fee waiver. An example of an HRA/DSS document evidencing receipt of SNAP is submitted as Attachment 3 to this comment for reference. USCIS should take advantage of the competent work that local and state governments have already invested in assessing an applicant’s resources and income in lieu of duplicating efforts and creating additional burdens by exclusively requiring and reviewing documents like tax transcripts. USCIS should use its resources to process applications, which are significantly backlogged, rather than engage in analysis that has already been done by the local agencies.

Conclusion

As a city, we have seen time and again that smart policies that support immigrants also serve to promote the well-being of all New Yorkers. Our policies and efforts to promote the accessibility and efficiency of the naturalization process and other immigration benefits are part of a thoughtful and equitable approach that helps ensure that New York City remains a thriving and

⁹ USCIS Policy Memoranda PM-602-0011.1 “Fee Waiver Guidelines as Established by the Final Rule of the USCIS Fee Schedule; Revisions to the *Adjudicator’s Field Manual (AFM)* Chapter 10., 9, *AFM* Update AD11-26 at p. 2

welcoming city. We urge USCIS to rescind its proposal eliminating the means-tested fee waiver eligibility category, which only serves to increase the time and resource burden associated with the waiver. We also urge USCIS to continue to further the accessibility of fee waivers, including ensuring that the evidentiary requirements and collection processes are as tailored as possible to the needs of all stakeholders. For the reasons stated above, New York City opposes the proposed rule changes.

Respectfully,

A handwritten signature in black ink, appearing to be 'B. Mostofi', written in a cursive style.

Bitta Mostofi
Commissioner
NYC Mayor's Office of Immigrant Affairs

A handwritten signature in black ink, appearing to be 'S. Banks', written in a cursive style.

Steven Banks
Commissioner
NYC Department of Social Services