

# E.O. 12866 Meeting: USCIS Fee Schedule: OMB Control Number 1615-AC18

Presented by

ASISTA

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# ASISTA

- ASISTA is a national non-profit whose mission is to advance the dignity, rights, and liberty of immigrant survivors of violence.
- Nationwide leaders and experts on survivor-based forms of immigration relief under the Violence Against Women Act (VAWA) and Trafficking Victims Protection Act (TVPA)

# Overview

- Stakeholders had an Insufficient time to comment to the proposed rule
- The proposed rule undermines Congressional intent that survivors should be able to access relief created under the Violence Against Women Act & the Trafficking Victims Protection Act
- The proposed rule contains incomplete information regarding impact of fee rule on survivor-based forms of immigration relief.



# Insufficient & Confusing Timeline

Nov. 14, 2019: Rule published-Comment Deadline Dec. 16, 2019



November 15-18, 2019: USCIS publishes 150 supporting documents



November 22, 2019: USCIS posts new economic analysis



December 9, 2019: USCIS extended deadline to December 30, 2109 for all forms and the proposed fee rule.



January 24, 2020: USCIS reopens public comment period with new deadline of February 10, 2020

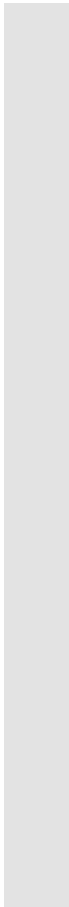

## Take-aways

- Public lacked meaningful opportunity to review and comment given the detail of the proposed rule and the overwhelming number of supplemental documents
- Executive Orders, like EO 12866 instructs that agencies should have a comment period **of not less than 60 days.**
- Disjointed comment period is not the same as having 60 continuous days from the start.

## Intervening Administrative Actions

After December 30<sup>th</sup>, stakeholders had to quickly pivot to address other major policy concerns, including but not limited to:

- December 30, 2019: USCIS posted new alert announcing it would reject U visa petitions if there is a blank space on the form.
- January 21, 2020 : Deadline for public comment to joint USCIS and EOIR Asylum Bar Rule
- January 30, 2020: USCIS announced it would start to implement public charge ground of inadmissibility on February 24, 2020
- February 4, 2020: Deadline for public comment regarding proposed revisions to Form I-290B which would cause harmful and drastic changes to USCIS motions and appeals process



# Fee Waivers & Immigration Relief Under VAWA and TVPA



## Impact of dynamics of domestic violence

- Survivors of intimate partner violence, sexual assault and human trafficking may be fleeing abusive living situations, may not have their own income source, or else their partners control primary documents.
- Abusers commonly prevent survivors from accessing or acquiring financial resources in order to maintain power and control in the relationship.
  - In one study, 99% of domestic violence victims reported experiencing economic abuse.
  - In a 2012 survey, three out of four victims said they stayed with their abusers longer for economic reasons.
- Some survivors may be facing critical deadlines related to their cases or otherwise may not have the time nor the ability to obtain additional documentation to support a fee waiver request.

## Underlying Relief Do Not Have Fees

- Applications for VAWA self-petitions, U and T visas, and work authorization granted upon approval do not have a fee. USCIS exempted fees for these applications, as noted in the USCIS 2007 fee rule. The agency reasoned that:

Those programs involve the personal well being of a few applicants and petitioners, and the decision **to waive these fees reflects the humanitarian purposes of the authorizing statutes. *The final rule maintains this blanket fee exemption because it is consistent with the legislative intent to assist persons in these circumstances.***

Anecdotal evidence indicates that applicants under these programs are generally deserving of a fee waiver.”

## Increases in Fees will Create Burdens for Immigrant Families & Limit Access

- Under new fee rule, ancillary forms commonly used in survivor-based forms of relief would exponentially rise, including:
- Form I-192 Application for Advance Permission to Enter as a Nonimmigrant from \$930 to \$1415.00, an increase of 52%.
- Form I-929 Applications for Qualified Family Members of U visa holders from \$230 to \$1515.00, an increase of nearly 559 %
- Form I-485 Adjustment of status applications from \$1,225 to \$2,195, an increase of 79%
- Form N-400: Naturalization, from \$640 to \$1170, an increase of 83%

## USCIS does not provide sufficient justification for fee increases

- Since last fee increase in December 2016, USCIS processing times have drastically increased, causing hardship for immigrant families and diminishing survivors' ability to rebuild their lives following abuse.
- USCIS has not justified why the agency requires another 21% increase just three years later. Nor has USCIS adequately shown how this fee increase will diminish increasing processing delays and improve customer service.
  - U visa processing times: 56- 56.5 months (from filing to waitlist)
  - T visa processing times: 20-28 months, in FY 2015 T visa applications were processed in 6.5 months
  - VAWA self-petitions, 18.5-24 months
  - <https://egov.uscis.gov/processing-times/>
- In fact, USCIS estimates that it will take several years before the agency's backlogs decrease measurably.

## Fee Waivers

- At the same time as USCIS drastically increase fees, it significantly diminishes access to fee waivers, thus undermining the bipartisan Congressional goals to make humanitarian immigration relief accessible to survivors.
- Congress codified the use of fee waivers in certain humanitarian cases in the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008.
  - specifically stating that DHS ***shall permit applicants to apply for a waiver of any fees associated*** with filing a VAWA self-petition, a T or U visa application, Temporary Protective Status, or an application for VAWA cancellation or suspension of deportation.
- While USCIS cannot eliminate access to fee waivers for ancillary forms for survivors, survivors may often be applying for naturalization or other immigration benefits and have necessity of a fee waiver, which would be eliminated under the proposed rule.

## Limits on Fee Waivers

- USCIS has already attempted to narrow the criteria for fee waivers through proposed revision to the I-912 Fee Waiver form. These changes limit survivors' access to immigration relief, and contained substantive policy changes under the guise of a form revision.
  - subject to a nationwide injunction pursuant to a pending matter (*Seattle v. DHS*) in the U.S. District Court for the Northern District of California.

The proposed rule again sharply narrows the criteria for fee waivers; and eliminates the means tested benefit **and** financial hardship criteria entirely leaving the only remaining criteria showing that applicants are at or below 125% of FPG.

## Limits on Fee Waivers

- USCIS thwarts the will of Congress when it imposes an evidentiary standard for fee waivers that is more difficult to meet than the legal protections Congress created for survivors under VAWA and the TVPA.
- Current USCIS fee waiver guidelines recognize the need for this documentary flexibility
  - “any other documentation or evidence”
  - “fee waiver may be approved in absence of additional documentation if request is sufficiently detailed to substantiate an inability to pay.”
- Impact of Revised I-912 language on proposed form



# Incomplete Data



## Impact of rule on fee waivers

- USCIS acknowledges that “limiting fee waivers may adversely affect *some* applicants’ ability to apply for immigration benefits.” By reducing the federal income guidelines criteria for fee waivers from 150% to 125% of the federal poverty guidelines, “DHS estimates about **22,748** fewer fee waiver applications would be approved.”
- Eliminating the means-tested benefit and financial hardship criteria of fee waivers, USCIS estimates that an additional 377,918 fee waiver applicants would no longer be eligible to receive a fee waiver.

## Data Points

- USCIS arrives at these estimates using data collected from October 2, 2017 through October 27, 2017 using only fee waiver applications that were submitted to the USCIS Office of Intake and Document Production (OIDP) at lockbox locations.
- Seemingly does not take into account humanitarian protections including VAWA self-petitions, U and T visa applications are submitted to the Vermont Service Center, and not at OIDP lockbox facilities.
- DHS indicates that it was not able to collect data at the service centers, but does not explain why it was not possible to do so.
- USCIS admits that fee waivers based on the individual being qualified according to statute (e.g. VAWA, U and T visa related matters, and TPS) “could be more than 1 percent of the total.”

USCIS should  
continue to  
use one fee  
waiver per  
family

- USCIS data suggests that 90% percent of Form I-912 filings were filed for one person on one form
  - derived from the OIDP sample which seemingly does not include any data regarding fee waivers submitted with survivor-based forms of relief.

## USCIS Data

Form of Relief	Principal Applicants Filed (FY 2019)	Derivative Applicants Filed (FY 2019)	Total Applications Filed (FY 2019)
U visa	28,364	18,861	47,225
T visa	1,242	1,011	2,253

USCIS U visa Demographics Report: Nearly half (43%) of principal U visa petitioners filed for a derivative. Each applicant having own form, requiring their own documentation, would be burdensome to applicants, petitioners and USCIS staff.

# ASISTA Public Comment

- ASISTA's public comment submitted December 30, 2019:  
<https://asistahelp.org/wp-content/uploads/2020/02/ASISTA-Fee-Rule-Comment-Final-1.pdf>
- ASISTA's public comment and supplemental document submitted February 10, 2020:  
<https://www.regulations.gov/document?D=USCIS-2019-0010-12198>