



January 5, 2011

# Executive Summary

## USCIS Stakeholder Engagement: Fee Waiver Form and Final Fee Rule

### Overview

On November 22, 2010, USCIS hosted a national teleconference to discuss important changes taking effect on November 23, 2010, including the publication of the new fee waiver form and the revised fees.

### Principal Themes

#### Request for a Fee Waiver (Form I-912)

The Form I-912, Request for a Fee Waiver, became available for public use on November 23, 2010. The form, which is meant to bring clarity and consistency to the fee waiver process, is the result of extensive collaboration with stakeholders. While applicants are not required to complete the form to request a fee waiver, USCIS encourages applicants who are seeking a fee waiver to use it.

Individuals may apply for and be granted a fee waiver for certain immigration benefits and services based on an inability to pay. Stakeholders can find a list of the petitions and applications USCIS will consider for a fee waiver in the [Instructions for Form I-912](#). One stakeholder commented that USCIS should allow the fee for Form I-102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document, to be waived for refugees.

All pending and newly submitted fee waiver requests will be reviewed under the same guidelines. When determining whether an individual is unable to pay a fee, USCIS will use the following steps:

- **Step 1:** Are you receiving a means-tested benefit? If an individual provides sufficient proof of the means-tested benefit, the fee waiver will normally be approved, and no further information will be required.
- **Step 2:** Is your household income at or below 150 percent of the Federal Poverty Guidelines? If an individual provides sufficient proof that his or her household income is at or below 150 percent of the Federal Poverty Guidelines at the time of filing, the fee waiver will normally be approved, and no further information will be required.
- **Step 3:** Do you have some financial hardship situation that you want USCIS to consider when determining your eligibility for a fee waiver? If you do, you must provide evidence to support your claim.

*Criteria and Supporting Documentation*

The criteria for each of the steps noted above and the required or acceptable supporting documentation are outlined in the [Instructions for Form I-912](#) and related policy memorandum (Note: The policy memorandum was available for public comment from November 22, 2010 – December 7, 2010. USCIS is currently considering the comments and will post the final memorandum on [www.uscis.gov](http://www.uscis.gov) under the “Laws” tab). Below are responses to questions and concerns raised by stakeholders during the teleconference regarding the criteria and supporting documentation:

- **Child receiving means-tested benefit** – According to the [Instructions for Form I-912](#), if a child is receiving a means-tested benefit, the parent may not necessarily qualify for a fee waiver. One stakeholder asked if this was a change in policy. This is not a change in policy. However, the fact that the child is getting a means-tested benefit strongly suggests the household income may be at or below 150 percent of the Federal Poverty guidelines. A family in this situation may want to submit a Form I-912 for consideration of the household income (check box b, Section 3 of the Form I-912).
- **Legally separated** – One stakeholder asked if you are not “legally separated,” but are nonetheless separated from your spouse, do you have to include your spouse’s information when requesting a fee waiver. If one of the following is true, then you must include your spouse’s information:
  1. You are claimed on your spouse’s income tax return as a dependent (or you claim your spouse on your income tax return as a dependent). Any income reported by your spouse on the income tax return needs to be reported on the fee waiver request; **or**
  2. Your spouse is providing you with some form of financial support. This financial support needs to be reported on the fee waiver request.
- **Foster care** – Some stakeholders were interested in whether foster care status is considered a means-tested benefit. Generally, foster children are receiving, either directly or indirectly through the foster parents/guardians, some form of government income subsidy. The foster parents/guardians should submit one of the following (check box c, Section 3 of the Form I-912):
  1. A recent state or juvenile court order establishing dependency or custodial assignment of the foster child; **or**
  2. A letter from the foster care home or similar agency overseeing the foster child’s custodial placement that describes the foster child’s inability to pay.
- **Special Immigrant Juveniles (SIJ)** – One stakeholder raised a concern about the documentation that special immigrant juveniles are being asked to submit and suggested that SIJ applicants should be exempt from paying the fee for Form I-485, Application to Register Permanent Residence or Adjust Status. There was also a concern about making additional requests from the juvenile court. The SIJ must demonstrate an inability to pay to have the Form I-485 fee waived. Evidence would include one of the following (check box c, Section 3 of the Form I-912):
  - Evidence that the SIJ is receiving a federal means-tested benefit; **or**
  - Pay stubs or bank statements indicating the SIJ’s income is under the federal poverty guidelines; **or**
  - Recent juvenile court order establishing dependency or custodial assignment of the SIJ; **or**

- Letter from a foster care home or similar agency overseeing the SIJ's custodial placement that describes the SIJ's inability to pay, **or**
  - Form I-797, Approval Notice, for a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, filed for the SIJ.
- **Temporary Protected Status (TPS)** – Some stakeholders asked how the new form will apply to applicants applying for TPS given the different regulations for fee waivers for TPS. USCIS noted that as of November 23, 2010 the TPS regulations have been rescinded and all fee waiver requests will be considered under the same guidelines.

### *Training*

USCIS has trained over 260 staff worldwide on the adjudication process for a fee waiver request. Stakeholders expressed interest in viewing the training materials. The training materials were taken directly from the USCIS policy memorandum and [Instructions for Form I-912](#). (Note: The policy memorandum was available for public comment from November 22, 2010 – December 7, 2010. USCIS is currently considering the comments and will post the final memorandum on [www.uscis.gov](http://www.uscis.gov) under the “Laws” tab).

### *Application Process*

The Form I-912 must be filed with the application(s) or petition(s) that an individual is requesting a fee waiver for. Applicants should mail the completed application(s) or petition(s), the Form I-912 and all supporting documentation to the USCIS office according to the “Where to File” directions identified in the form instructions to which the Form I-912 relates.

USCIS clarified that an attorney cannot file the Form I-912 on behalf of an applicant. The form must be completed and signed by the applicant.

One stakeholder asked if the Form I-912 applies to individuals in removal proceedings or whether the Immigration Judge will adjudicate a request for a fee waiver in these cases. If an Immigration Judge waives an application fee during a court proceeding, the applicant just needs to submit a letter from the Executive Office for Immigration Review (EOIR) judge stating that the fee for the application is waived (check box b, Section 3 of the Form I-912).

USCIS has set a goal to process fee waiver requests within five business days and the agency continues to work towards meeting this goal. Applicants can assist USCIS in reaching this goal by submitting clear and sufficient evidence.

If a fee waiver is approved, USCIS will send a notice to the applicant or petitioner informing him/her that the application or petition has been receipted and the filing amount is \$0. If the request is denied, USCIS will notify the applicant or petitioner and provide an explanation why the request was denied.

### *Deficient Fee Waiver Requests*

Some stakeholders asked about how USCIS will handle fee waiver requests that are found to be ineligible. One stakeholder asked whether applicants would be given a 30-day grace period to correct a deficient fee waiver request. USCIS indicated that while this was considered, making the regulatory changes would have delayed the publication of the form.

Another stakeholder raised a concern about applications that are time sensitive. For example, Form

I-290B, Notice of Appeal or Motion, must be filed within 30 calendar days after service of the decision (33 days if the decision is mailed). The question posed by the stakeholder was whether the initial deadline to file will be extended when a fee waiver request is denied or whether USCIS will consider the date the application was submitted with a fee waiver request to be the date of filing. USCIS indicated that if the fee waiver request is approved, the date the application was received is considered the date of filing. In the case of fee waiver denials, the applicant may choose to not re-apply, submit the application again with the required fee, or request a new fee waiver and provide additional evidence of the inability to pay. There will be no stay or extension in an application deadline or retention of any priority in the case of a denied fee waiver.

### **Final Fee Rule**

The final fee rule also became effective on November 23, 2010. The final rule increased overall fees by a weighted average of approximately 10 percent, but did not increase the \$595 fee for the naturalization application. The biometric fee increased to \$85.

Stakeholders were interested in what the revised fees were and where they could find this information. All fees can be found on the USCIS website [www.uscis.gov](http://www.uscis.gov). Stakeholders can also refer to the [Form G-1055, Fee Schedule](#), which includes when there is a fee exemption.

One stakeholder asked about the revised Form I-129, Petition for Nonimmigrant Worker. Specifically, there was a question about whether it is mandatory to include an itinerary if the beneficiary will be working off-site. An itinerary is required if the beneficiary will be working or training in more than one location (please see the form instructions). USCIS will not reject a filing if an itinerary is not included. However, depending on the classification being sought, USCIS may issue a Request for Evidence (RFE) for an itinerary if one was not included in the filing and is needed to adjudicate the case.

In addition, there was a question about how Part 6 of the form, pertaining to controlled technology, would affect adjudication and the burden it would place on employers. USCIS stated that this attestation is for information collection purposes. USCIS has also notified petitioners that they will not be required to complete Part 6 of Form I-129 until Feb. 20, 2011.